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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 175

THE INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

INLAND WATERWAYS CORPORATION, CARGILL, INCORPORATED, NORRIS GRAIN COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED JUNE 24, 1942.

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VOL. I

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IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INLAND WATERWAYS CORPORATION, Plaintiff,
vs.
UNITED STATES OF AMERICA, et al., Defendants.

Civil Action
File No. 3775

COMPLAINT
(EQUITABLE RELIEF SOUGHT)

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IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

INLAND WATERWAYS CORPORATION,
Plaintiff.

vs.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
THE BALTIMORE AND OHIO RAILROAD COMPANY,
ROBERT E. WOODRUFF and JOHN A. HADDEN, Trustees of the Erie Railroad and of the Chicago & Erie Railroad Company,
THE NEW YORK CENTRAL RAILROAD COMPANY,
THE NEW YORK, CHICAGO, AND ST. LOUIS RAILROAD COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY,
THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
Defendants.

Civil Action

File No. .....

COMPLAINT

1. The plaintiff, Inland Waterways Corporation, brings this complaint against the Interstate Commerce Commission and the United States of America for the purpose of suspending, enjoining, setting aside, and annulling a certain order, more particularly hereinafter described, issued by the Interstate Commerce Commission (hereinafter referred to as the Commission) on December 1, 1941, in a proceeding before the Commission known as *Investigation & Sus-*

Extension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory, said order being reproduced as Appendix D, on pages 47 to 77 hereof, and brings this complaint against defendants other than the United States of America (said defendants being hereinafter referred to collectively as carrier defendants) for the purpose of enjoining and prohibiting said carrier defendants from publishing and filing with the Commission tariffs or schedules of rates and charges found by the Commission in said order to be just and reasonable and not shown to be otherwise unlawful, and permitted by said order to be published and made effective, and from making effective and enforcing said rates and charges. This action arises under, the United States is made a defendant herein, and the jurisdiction of this Court is conferred by, U. S. C., Title 28, Sections 41 (28), 43, 44, 45, 45(a), 46, 47, and 48, as hereinafter more fully appears.

2. Plaintiff, Inland Waterways Corporation, is a corporation organized and existing under the laws of the United States, with its principal office and place of business at St. Louis, Missouri; it is engaged in the operation of a common carrier barge line system of transportation on the Mississippi River and certain of its tributaries, including a common carrier barge line service in interstate commerce via water from Kansas City, Missouri-Kansas, on the Missouri River, from St. Louis, Missouri, East St. Louis, Illinois, and various other ports in Illinois, Iowa, and Minnesota on the Mississippi River, and from various ports in Illinois on the Illinois River to Chicago, Illinois; and is a common carrier by water subject to Part III of the Interstate Commerce Act (U. S. C., Title 49, Sections 901-923).

3. Defendant, The Baltimore and Ohio Railroad Company, is a corporation chartered by the states of Maryland and Virginia; its principal office and place of business is at Baltimore in the state of Maryland; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Missouri, Illinois, Indiana, Kentucky, Ohio, West Virginia, Virginia, Pennsylvania, New York, Maryland, Delaware, New Jersey, and other states in the United States.

4. Defendants, Robert E. Woodruff and John A. Hadden are trustees, duly appointed under the laws of the United States, of the properties of the Erie Railroad and Chicago & Erie Railroad Company; their general offices and places of business are at Cleveland in the state of Ohio and at New York City in the state of New York; and they operate lines of railroad for the carriage of freight throughout the states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, and other states in the United States.

5. Defendant, The New York Central Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Ohio, Illinois, and Pennsylvania; its principal office and place of business is at Albany in the state of New York; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of New York, Massachusetts, Pennsylvania, Ohio, Indiana, Illinois, Michigan, West Virginia, Kentucky, Missouri, New Jersey, and other states in the United States, and Canada.

6. Defendant, The New York, Chicago and St. Louis Railroad Company, is a corporation operating

under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Pennsylvania, Ohio, Indiana, and Illinois; its principal office and place of business is at Cleveland in the state of Ohio; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of Indiana, Illinois, Ohio, New York, Pennsylvania, Missouri, Michigan, and other states in the United States.

7. Defendant, The Pennsylvania Railroad Company, is a corporation incorporated under the laws of the state of Pennsylvania; its principal office and place of business is at Philadelphia in the state of Pennsylvania; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Missouri, and other states in the United States, and Canada.

8. Defendant, The Chesapeake and Ohio Railway Company, is a corporation incorporated under the laws of the state of Virginia; its principal office and place of business is at Richmond in the state of Virginia; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Illinois, Indiana, Ohio, Kentucky, West Virginia, Virginia, and other states in the United States.

9. Defendants above named (other than the United States) are common carriers, or trustees, or receivers, of common carriers, and are engaged in the transportation of property by rail in interstate commerce be-

tween various points on their lines and also between points on their lines and points on lines of railroad connecting therewith; and more particularly, as to grain arriving at Chicago via rail, via lake, and via barge from origins to the west, northwest, and southwest thereof, (grain so arriving being hereinafter referred to as ex-rail, ex-lake, and ex-barge, respectively) and temporarily stored at Chicago before reshipment therefrom, are engaged in the transportation of such grain upon the reshipment thereof from Chicago to destinations throughout the various states of the United States located to the east of Chicago.

10. In the course of its business, plaintiff transports to Chicago, Illinois, grain in interstate commerce via barge over various waterways, including the Illinois Waterways, from the various ports referred to in paragraph (2) above (said grain being hereinafter referred to as ex-barge grain), from whence said grain is reshipped both via lake steamer and via the lines of the defendant carriers and other railroads to destinations to the east of Chicago. Said interstate transportation is conducted on a port-to-port basis without any common arrangement with carriers beyond Chicago for through transportation. Prior to September 18, 1940, said transportation was not subject to the Interstate Commerce Act, but on the date last mentioned said transportation became subject to Part III of the Interstate Commerce Act by virtue of the amendments to that Act added by the Transportation Act of 1940, enacted September 18, 1940 (U. S. C., Title 49, Sections 901-923). Since March 1, 1941, said transportation has been conducted for rates and charges published and filed with the Interstate Commerce Commission pursuant to the requirements of the statutes just mentioned.

11. For many years the carrier defendants have maintained in tariffs, lawfully published and filed with the Commission, the same separately stated proportional or reshipping rates from Chicago, Illinois, to destinations located throughout the various states to the east thereof on ex-barge grain as on ex-lake or ex-rail grain, all of said proportional and reshipping rates being lower than the corresponding rates published for application to local grain shipped from Chicago and Chicago rate points. By tariffs filed to become effective October 15, 1939, (Supplement No. 23 to Agent B. T. Jones' I. C. C. No. 3047, Supplement No. 67 to Agent B. T. Jones' I. C. C. No. 3055, Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3300, and Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3372), the defendant carriers proposed (a) to restrict the application of the said reshipping and proportional rates so as to make them not applicable to ex-barge grain when reshipped from Chicago; and (b) to subject said ex-barge grain to the higher basis of the local rates from Chicago. Representative examples of tariff rules which then and now provide for the application of the proportional or reshipping rates to ex-rail, ex-barge, and ex-lake traffic, and representative examples of the tariff rules containing the proposed restriction are contained in Appendices II and III to the report of Division 2 in *Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory*, reported in 246 I. C. C. 353, and reproduced on page 19 *et seq.* hereof. The plaintiff, on September 1, 1939, filed with the Commission its written protest against the change in rates proposed in the tariff schedules above noted, urging that such change in rates, if made effective, would be in violation of Sections 1 and 3 of the Interstate Commerce

Act (U. S. C., Title 49, Sections 1 and 3), and on October 4, 1941, filed its supplemental written protest, requesting that the Commission suspend the operation of said schedules and enter into an investigation concerning the lawfulness thereof, pursuant to the authority conferred upon the Commission by paragraph (7) of Section 15 of the Interstate Commerce Act (U. S. C., Title 49, Section 15(7)).

12. Thereupon, the Commission, by order of October 14, 1939, reproduced herein as Appendix A,* suspended the operation of said proposed change in rates and instituted an investigation into the lawfulness thereof in *Investigation & Suspension Docket No. 1718*, above mentioned, and the carrier defendants, by appropriate supplements to their tariffs, deferred the effective date of the above described proposed change in rates on ex-barge traffic, and said change in rates and charges has not yet been made effective.

13. Subsequent to the order shown in Appendix A, hearings were duly had in the proceeding instituted by that order and the parties were heard on brief, on exceptions to a report proposed by an Examiner of the Commission, and in oral argument.

14. During the pendency of the proceeding, the Transportation Act of 1940, approved September 18, 1940, was enacted, said Act making the following change in the substantive law as it existed at the time the proceeding was instituted. First, common carriers by water, including the plaintiff, were made subject to Part III of the Interstate Commerce Act, and required, after the effective date thereof, to conduct port-to-port transportation, theretofore exempt from regulation, upon rates and charges published in tariffs filed with the Interstate Commerce Commission.

* Pages 15 to 18, inclusive herein.

Secondly, a national transportation policy was declared (54 Stat. L. 899), which reads as follows:

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

Thirdly, paragraph (3) of Section 3 of the Interstate Commerce Act, which prior to September 18, 1940, did not apply to common carriers by water engaged in port-to-port transportation not subject to the Interstate Commerce Act, and which then read as follows:

> "All carriers, engaged in the transportation of passengers or property, subject to the provisions of this chapter, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in

> their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

was amended so as to become paragraph (4) of Section 3 of Part I of the Interstate Commerce Act, and to read as follows:

> "All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III."

15. On exceptions to report proposed by an Examiner of the Interstate Commerce Commission in said proceeding, and in the oral argument therein, both of which were subsequent to September 18, 1940, the Commission was requested by plaintiff to dispose of said proceeding in the light of the changes in substantive law noted in the immediate preceding paragraph.

16. On July 31, 1941, Division 2 of the Interstate Commerce Commission entered its report and order in said proceeding, said report and order being reproduced as Appendix B hereto.* In that report and order the said Division 2 found that the tariff schedules under suspension had not been shown to be unlawful. Accordingly, Division 2 vacated and set aside the suspension

* Following page 18 hereof.

order and discontinued the proceeding as of August 30, 1941.

17. On August 22, 1941, the Commission modified its order of July 31, 1941, so as to become effective on October 15, 1941, instead of August 30, 1941.

18. Thereafter, under date of August 26, 1941, the plaintiff filed with the Commission its petition seeking a reconsideration and rehearing in said proceeding, said petition being reproduced as Appendix C hereto.* In said petition the plaintiff particularly averred the amendments to the Interstate Commerce Act which resulted from the Transportation Act of 1940, as above noted, prayed that the Commission reverse the findings of Division 2 as to the lawfulness of the proposed rates and find said proposal to be unlawful, and also requested a further hearing if the Commission deemed the record inadequate fully to inform the Commission of the facts pertinent to the issues in view of the above noted amendment to Section 3 of the Interstate Commerce Act. In said petition plaintiff specifically sought from the Commission a finding that under said Act, as amended, the proposal of the defendant carriers would result in discrimination as between connecting carriers in violation of paragraph (4) of Section 3 of the Act as amended.

19. On September 30, 1941, the Commission further modified its order of July 31, 1941, as modified by its order of August 22, 1941, so as to postpone the effective date thereof until the further order of the Commission.

20. On December 1, 1941, the Commission issued its report and order on reconsideration in said proceeding, said report and order being reproduced as Appendix D hereto.† In its said report the Commission found that the proposed schedules had been shown to be just and

* Pages 28 to 46 hereof.
† Pages 47 to 77 hereof.

reasonable and had not been shown to be otherwise unlawful and by its order the Commission vacated and set aside its order of suspension as of December 22, 1941, and discontinued the proceeding. In said report, made a part of the order, the Commission took no note of the changes in substantive law which occurred while the proceeding was pending and made no findings whatsoever regarding the charge asserted by plaintiff of discrimination as between connecting carriers, other than to state the ultimate conclusion that the proposed schedules had not been shown to be unlawful.

21. If said order is permitted to become effective, and the defendant carriers make the change in rates and charges authorized thereby, the plaintiff will be unable to compete with rail carriers for the transportation of grain transported to Chicago for the purpose of reshipment therefrom by rail. The value of ex-barge grain at Chicago is precisely the same as the value at Chicago of ex-lake or ex-rail grain of the same species and grades. Under the tariffs found lawful by the Commission, the rate on ex-barge grain from Chicago to New York, as a representative destination, will be 8.5 cents per hundred pounds higher than the rate from Chicago to New York on ex-rail or ex-lake grain. No shipper will use the line of the plaintiff for its inbound transportation to Chicago on grain to be shipped via rail to eastern destinations in the face of the rate penalty beyond Chicago just noted. Rather, shippers will use the lines of rail carriers with which the plaintiff competes for hauls to Chicago, since thereby reshipment via rail from Chicago to eastern destinations can be obtained at 8.5 cents per hundred pounds less freight rate than if the grain so reshipped was brought into Chicago by the plaintiff. By reason of

the circumstances just described, plaintiff will be unable to secure traffic which it would otherwise secure, and will be subjected to irreparable damage and injury if the defendant carriers are authorized by the Commission to make effective the changes in rates provided by the tariffs involved in the above-described proceeding before the Commission.

21. The report and order of the Commission of December 1, 1941, is unlawful and void and beyond the power of the Commission to make for the following reasons:

(a) Said report and order are not supported by essential findings of fact;

(b) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in failing to make a specific finding and disposition of the issue tendered by the plaintiff of the alleged violation of paragraph (4) of Section 3 of the Interstate Commerce Act;

(c) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in failing to dispose of the issue tendered for determination in the light of the amendments to the Interstate Commerce Act made by the Transportation Act of 1940;

(d) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in failing to grant plaintiff a rehearing by reason of the change in the governing statute which occurred while the proceeding was pending before the Commission and subsequent to the hearings on which the Commission predicated its decision;

(e) In entering said report and order, the Commission acted arbitrarily in that it declined to exercise the

function and jurisdiction conferred on it by paragraph (7) of Section 15 and paragraph (11)(b) of Section 6 of the Interstate Commerce Act, (U. S. C., Title 49, Sections 15(7) and 6(11)(b) and concluded that the proceeding before it was not a proper one in which to prescribe proportional rates on the ex-barge traffic lower than local rates;

(f) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory power in giving effect to the measure of the inbound rate and the relative length and nature of the inbound transportation service in its determination of the lawfulness under paragraph (4) of Section 3 of the Interstate Commerce Act (U. S. C., Title 49, Sections 3-4), of the proposal of the eastern railroads to make proportional and reshipping rates from Chicago to the east higher on ex-barge grain brought to Chicago by connecting water lines subject to Part III of the Interstate Commerce Act than on ex-rail grain brought to Chicago by connecting railroad lines subject to Part I of the Interstate Commerce Act;

(g) Said report and order of the Commission is without support in the evidence, since the record before the Commission, made before the enactment of Part III of the Interstate Commerce Act, contains no evidence to support findings of fact upon which the Commission could base a valid conclusion that the application on ex-barge grain brought to Chicago by the plaintiff of a higher reshipping rate than is contemporaneously provided as a reshipping rate on ex-rail traffic brought to Chicago by competing railroad carriers would be non-discriminatory and not in violation of paragraph (4) of Section 3 of the Interstate Commerce Act; and

(h) The Commission was without authority in law or in fact to make said order.

WHEREFORE, plaintiff prays:—

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order until the final determination of this cause and that upon final hearing a decree be entered enjoining said carrier defendants from making effective said change in tariffs unless and until approved as lawful by a lawful order of the Commission; and

(c) That plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

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APPENDIX A.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 14th day of October, A. D. 1939

INVESTIGATION AND SUSPENSION DOCKET No. 4718

GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

It appearing, That there have been filed with the interstate Commerce Commission tariffs containing schedules stating new individual and joint regulations and practices affecting rates and charges to become effective on the 15th day of October, 1939, and later, designated as follows:

Chicago and North Western Railway Company (Charles M. Thomson, Trustee):
Supplements Nos. 7 and 9 to I. C. C. No. 10610;

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):
Supplements Nos. 8 and 10 to I. C. C. No. B-6931;
Supplements Nos. 8 and 10 to I. C. C. No. B-6932;

B. T. Jones, Agent:

Supplements Nos. 21 and 23 to I. C. C. No. 3047;
Supplements Nos. 64 and 67 to I. C. C. No. 3055 and MF-I. C. C. No. 16;
Supplements Nos. 4 and 7 to I. C. C. No. 3272 and MF-I. C. C. No. 30;
Supplements Nos. 4 and 7 to I. C. C. No. 3300;
I. C. C. No. 3356 and MF-I. C. C. No. 34;

L. E. Kipp, Agent:

Supplements Nos. 4 and 7 to I. C. C. No. A-3066;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the regulations and practices stated in the said schedules contained in said tariffs, viz.:

Chicago and North Western Railway Company (Charles M. Thomson, Trustee);

Supplements Nos. 7 and 9 to I. C. C. No. 10610, on pages 2 thereof, all provisions shown under the caption "Reshipping or Proportional Rates from Chicago, Ill.";

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):

Supplements Nos. 8 and 10 to I. C. C. No. B-6931, on pages 3 thereof, all provisions shown under the caption "Application of Reshipping or Proportional Rates from Chicago, Ill.";

Supplement No. 8 to I. C. C. No. B-6932, on page 3 thereof, Item 500-C;

Supplement No. 10 to I. C. C. No. B-6932, on page 3 thereof, Item 500-D;

B. T. Jones, Agent:

Supplement No. 21 to I. C. C. No. 3047, on page 5 thereof, Notes 20, 25 and 35; on page 6 thereof, Notes 40 and 47;

Supplement No. 23 to I. C. C. No. 3047, on page 5 thereof, Note 20; pages 6 to 11 inclusive thereof, except Item 110-A;

Supplement No. 64 to I. C. C. No. 3055 and MF-I. C. C. No. 16, page 3 thereof; on page 4 thereof, Notes 38, 40 and 50;

Supplement No. 67 to I. C. C. No. 3055, and MF-I. C. C. No. 16, on page 3 thereof, Notes 20 and 22; pages 4 to 10 inclusive thereof, except Note 45;

Supplement No. 4 to I. C. C. No. 3272, and MF-I. C. C. No. 30, on page 2 thereof, Notes 1 and 22;

Supplement No. 7 to I. C. C. No. 3272, in full;

Supplement No. 4 to I. C. C. No. 3300, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. 3300, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47;

I. C. C. No. 3356, and MF-I. C. C. No. 34, the title page thereof insofar as it cancels schedules suspended by this suspension order; on page 90 thereof, Notes 20 and 22; pages 91 to 95 inclusive thereof; on page 96 thereof, Note 41; on pages 98 and 99 thereof, Note 50;

Agent L. E. Kipp:

Supplement No. 4 to I. C. C. No. A-3066, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. A-3066, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47.

It further appearing, That said schedules make certain increases affecting rates for the transportation of grain, grain products, and grain by-products, carloads, in interstate and foreign commerce, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and

that the use of the regulations and practices therein stated be deferred upon interstate and foreign traffic until the 15th day of May, 1940, unless otherwise ordered by the Commission, and no change shall be made in such regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That this order shall apply to said schedules only to the extent that said schedules apply to transportation subject to Part I of the Interstate Commerce Act.

And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and upon B. T. Jones and L. E. Kipp, Agents, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

By the Commission, division 2.

(Seal) W. P. Bartel.

Secretary.

Here follow Appendix "B"—Report of I. C. C., Docket No. 4718—[fols. 20-66]

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

Submitted January 8, 1941. Decided July 31, 1941

Proposed cancelation of the application of reshipping or proportional interstate rail rates on grain, grain products, and grain byproducts, in carloads, from Chicago and Peoria, Ill., St. Louis, Mo., and other related grain rate-break points, to eastern destinations, when that traffic arrives at the rate-break points by boat or barge over the Illinois Waterways on rates not subject to our jurisdiction, found justified. Order of suspension vacated, and proceeding discontinued.

F. H. Cole, Jr., Leo P. Day, and *George Dyche* for respondents.

Nuel D. Belnap, John S. Burchmore, Robert N. Burchmore, Helen W. Munsert, C. E. Childe, Charles S. Macaulay, W. G. Oliphant, L. D. Shaffer, David F. Root, Edward B. Hayes, and *G. W. Baxter* for protestants.

A. B. Enoch, Carson L. Taylor, H. I. Allen, H. C. Barron, P. F. Gault, W. H. Jacobs, E. M. Martin, Elmer A. Smith, Fred C. Furry, J. E. Flansburg, R. M. Hegberg, Henry Christianson, W. H. Blair, and *F. W. Maronn* for western and other railroads supporting respondents.

Freeman Bradford, Lawrence Farlow, J. S. Brown, William T. McArthur, Arthur L. Schier, and *W. V. Wheat* for interests supporting respondents.

Herbert J. Campbell for the Chicago Board of Trade.

F. B. McElroy for the Illinois Commerce Commission.

Edward T. Breen and *Ben Schwartz* for the attorney general of the State of Illinois.

Willis Crane, Halsey McGovern, and *Mastin G. White* for the United States Department of Agriculture.

Bernard L. Glover, Charles D. Miller, E. B. Smith, Y. H. Sparrow, C. L. Bruno, George R. Watson, T. C. Burwell, H. H. Heftes, and *P. L. Holmes* for other interests.

REPORT OF THE COMMISSION

DIVISION 2, COMMISSIONERS AITCHISON, SPLAWN, AND ALLDREDGE

BY DIVISION 2:

Exceptions were filed by respondents, and protestants, including those representing the Chicago interests and the Chicago Board of Trade, to the report proposed by the examiner; and the western rail

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lines appearing in support of the proposal, as well as the respondents, filed replies to the exceptions of the Chicago protestants. The proceeding was orally argued.

By schedules filed to become effective October 15, 1939, and later dates, respondents propose to cancel the application of reshipping or proportional interstate rail rates on grain, grain products, and grain byproducts,[1] in carloads, from Chicago and Peoria, Ill., St. Louis, Mo., and other related grain rate-break points, to central, trunk-line, and New England territories, including a portion of eastern Canada,[2] now applied on domestic as well as export traffic, when such traffic arrives at the reshipping or proportional-rate point by boat or barge over the Illinois Waterways on rates not subject to the Interstate Commerce Act, and to apply higher local rates in lieu thereof.

Upon protests of the Federal Barge Lines, Continental Grain Company, Norris Grain Company, and others, operation of the proposed schedules was suspended until May 15, 1940, and they have since been voluntarily postponed pending the determination of this proceeding. Unless otherwise stated, rates and charges will be in cents per 100 pounds.

In *Baltimore Chamber of Commerce* v. *Baltimore & O. R. Co.*, 22 I. C. C. 596, wherein the reasonableness of similar proportional or reshipping rates here in issue, although different in amount, were considered (at least so far as Baltimore, Md., as a destination is concerned), it was stated that there is no substantial difference between a "reshipping" rate and what is known as a "proportional" rate. This interpretation has been adhered to in a long line of later reports. As the terms are synonymous, the term "proportional" will hereinafter be used except where reference is made to a specific tariff item covering "reshipping" rates.

Under the proposal, higher local rates will apply from the rate-break points (of which Chicago is the most important) to eastern destinations on grain which has moved into such points in boats or barges over the Illinois Waterways, hereinafter called ex-barge traffic, on rates not filed with us, whereas the lower proportional rates will continue to apply east of Chicago, for example, on grain which has moved into that point by rail, by lake on rates not on file, and by certain barge lines which file rates here.

History of the Illinois Waterways.—During the period from 1848 to 1908, what was then called the Illinois & Michigan Canal was open to

[1] Hereinafter collectively called grain.

[2] Trunk line and New England territories, including points in eastern Canada, hereinafter collectively called trunk line territory.

the transportation of grain and other commodities into Chicago. In 1908 the State of Illinois authorized a $20,000,000 bond issue for the improvement of the Illinois Waterways, including a portion of the Illinois River. In 1930 the Federal Government took over the project, and the Waterways were again opened for navigation into Chicago in 1933. Exclusive of the expenditures on the old Illinois & Michigan Canal, it is estimated that the total cost of improvements of the Illinois Waterways for navigation purposes has been $60,000,000. No lock charges are made on the Illinois Waterways. Upon the reopening of these waterways certain individuals, grain merchants, and elevator companies invested large sums in elevator facilities along its course. They now fear that respondents' proposal to deny the application of the proportional rates beyond Chicago on ex-barge traffic will be in derogation of their investments, and will seriously curtail the further development of the waterways. As will be later shown, however, most of the grain transported over the waterways to Chicago moves out of that point by lake, rather than by rail.

The principal points along the Illinois Waterways from which grain is barged into Chicago are Morris, Paytonville, Seneca, Marseilles, Ottawa, Utica, La Salle, Depue, Bureau, Hennepin, Henry, Lacon, Chillicothe, Peoria, Pekin, and Havana, Ill. The approximate distances over this route to Chicago range from 57.5 to 200.9 miles. Most of the terminal elevators are located in South Chicago and are ordinarily served through the Calumet-Sag Canal, entailing an additional water haul of about 10 miles. The Continental Grain Company and the Norris Grain Company operate river elevators along this route as well as terminal elevators at Chicago or South Chicago. River elevators are also operated by other interests.

Volume of grain moving in and out of Chicago.—Appendix I shows the number of bushels of corn, wheat, oats, and soybeans received at Chicago during the years 1932 to 1939, inclusive, and the transportation facility used on the in-bound movement.

During the years 1932 to 1938, both inclusive, the annual productions of corn in the State of Illinois were 422,131,000, 238,545,000, 167,808,000, 318,510,000, 217,751,000, 449,616,000, and 379,350,000 bushels, respectively. In 1934 and 1936 droughts occurred in Illinois and the West and this accounts for the increased tonnage of corn moving into Chicago over the lake during the years 1935 to 1937, and particularly for the corn that was imported through the port of Chicago during 1937. Ordinarily, corn is a surplus crop in the portion of Illinois and the small part of Indiana here considered. This corn-producing section lies west and southwest of Chicago and is bounded on the north by Herbert and Oregon, Ill., on the west by Prophetstown

and Neponset, Ill., on the southwest by Cazenovia, Ill., on the south by Ocoya, Danforth, and Pittwood, Ill., and on the east by Schneider and North Hayden, Ind. The Chicago grain dealers consider this section as within their trade territory. Much of the 65,774,000 bushels of corn received in Chicago in 1939 by rail, and all of the 13,206,000 bushels received over the Illinois Waterways, originated in this section. In addition to being served by many western rail lines, this producing section is also served by certain of the eastern rail-line respondents in this proceeding, including The New York Central Railroad Company, hereinafter called the New York Central. Chicago is the greatest corn market in the world, and the record in the instant proceedings shows that during 1939 the six Chicago protestants controlled 83 percent of all the grain coming into this market. They also operate all of the public elevator or storage space at Chicago.

As corn has become the principal grain moving into Chicago over the Illinois Waterways, the rates and charges on it will be discussed in detail. Substantial quantities of wheat, oats, and soybeans also move into Chicago from this producing section.

Published rail rates into Chicago.—The table below shows the interstate rates applicable on grain and the intrastate rates on corn to Chicago from the origin points previously mentioned. The so-called specifics are not published rates, but represent the proportion to Chicago of one-factor through rates from these origins to eastern destinations. The intrastate rail rates on corn were established for the purpose of meeting truck and Illinois Waterways competition to Chicago and are nontransit rates. The interstate rates are said to be the normal basis, reflecting the general grain-rate structure.

Rates in cents per 100 pounds

To Chicago from	Intrastate	Interstate	Interstate specific
Morris, Ill	[illegible]	9.5	[illegible]
Schneider, Ind	[illegible]	8.5	[illegible]
North Hayden, Ind	[illegible]	8.5	[illegible]
Pittwood, Ill	8.5	12	[illegible]
La Salle, Ill	[illegible]	12	[illegible]
Danforth, Ill	9.5	12	[illegible]
Herbert, Ill	10	10.5	[illegible]
Ocoya, Ill	[illegible]	12	[illegible]
Oregon, Ill	[illegible]	12	[illegible]
Neponset, Ill	11.5	12	[illegible]
Cazenovia, Ill	11.5	12	[illegible]
Prophetstown, Ill	12.5	13	[illegible]

Volume of movement into Chicago over the Illinois Waterways; unpublished barge charges; and incidents connected therewith.—Of the 13,206,000 bushels of corn moving into Chicago over the Illinois

Waterways during 1939, the record shows that 13,094,962 bushels were transported by six barge lines, divided as follows:

Barge line	Number of pounds	Number of bushels [1]	Number of trips
Allied Barge Corporation	244,000,544	4,358,224.1	174
John I. Hay Co.	77,328,450	1,380,865.1	39
Lawrence Transportation Co.	3,294,850	58,836.1	7
Myers Transportation Co.	459,810	8,210.9	1
A. L. Mechling Barge Line	407,576,180	7,278,146.1	371
Waterways Transportation, Inc.	588,070	10,579.9	1
Total	733,317,914	13,094,962.2	593

[1] Based on the average weight for corn of 56 pounds per bushel.

Practically all of the corn transported in the barges of the Allied Barge Corporation, and most of that transported by the A. L. Mechling Barge Line, hereinafter called the Mechling Line, was loaded into barges at Morris or Patonville, the latter being an unincorporated community not served by rail immediately across the Illinois River from Morris.

The Mechling Line is unincorporated. It has not secured a certificate of public convenience and necessity from us or from the Illinois Commerce Commission, nor did it file rates with or make annual reports to either commission prior to the enactment of part III of the Interstate Commerce Act. It has no agreement with the respondents in this proceeding with respect to the shipment of grain beyond Chicago. The rapid growth of this line is demonstrated by the fact that the barges operated by it during 1936 were leased from others and its motive power consisted of 2 towboats, whereas at the time of the hearing its equipment had increased to 17 owned barges, 1 leased barge, and 4 towboats.

The Mechling Line did not publish its charges for transportation in tariff form prior to the enactment of part III, although it actively solicited business from all shippers of grain along the Illinois Waterways and has barged grain into Chicago from all elevators from Havana to and including Morris. Its charges for transporting grain in bargeload lots to Chicago when loaded in its own barges (as contrasted with grain loaded in barges belonging to others) are as follows:

From:	Cents
Morris, Ill.	2.75
Patonville, Ill.	2.75
Seneca, Ill.	2.75
Ottawa, Ill.	2.75
La Salle, Ill.	2.75
Peru, Ill.[1]	3.25
Hennepin, Ill.	3
Henry, Ill.	3.5
Lacon, Ill.	3.5
Chillicothe, Ill.	3.5
Peoria, Ill.	4
Pekin, Ill.	4
Havana, Ill.	4.5

[1] Temporary loading facilities.

Under its present rates this line maintains that its business is profitable. The "River Straight Bill of Lading" under which this business is handled contains the following provision:

It is understood and agreed that the carrier and the vessel or vessels do not hold themselves out as transporting cargo or towing for the general public and only transport cargo and tow as private carrier under private contract.

Notwithstanding this statement which appears in the contract of carriage, it was testified by the owner of this line that it holds itself out to handle shipments of grain for any shipper offering tonnage.

On exceptions, the Chicago protestants request that we find the Mechling Line to be a common carrier by water and that the grain transported by it to Chicago is within the traffic described in section 6 (11) (b) of the act. On argument, counsel for this line stated that he has been instructed to file its rates here as a common carrier of grain by February 1, 1941, but that the line takes the position it is not a common carrier "of everything." The evidence presented with respect to this line's common-carrier status is not supported by testimony other than the self-serving statements made by its witness. The Mechling Line filed no appearance in this proceeding, and its evidence must, therefore, be construed as gratuitous in character. On the present record the evidence for this line is conflicting and is insufficient to warrant a determination of its carrier status.

The Cooperative Allied Grain Dealers Corporation, of Morris, operates elevators on the north bank of the Illinois River at Morris and Seneca, and at the time of the hearing its grain, for the most part, was loaded into barges owned by the Allied Barge Corporation, which was organized by interests connected with the former corporation. This barge line owns four barges, each having a capacity of 30,000 bushels of grain and costing $8,500. It owns no towboats. Its barges are towed by the Mechling Line under a separate contract which provides that the rates to the Chicago terminal elevators will be 1 cent per bushel on grain except oats and 0.8 cent per bushel on oats. These rates are equivalent to 1.67 cents per 100 pounds on wheat and beans at 60 pounds per bushel, 1.79 cents per 100 pounds on corn at 56 pounds per bushel, and 2.5 cents per 100 pounds on oats at 32 pounds per bushel. It is to be observed that the towage performed by the Mechling Line on the traffic just mentioned is contract carriage and that the charges therefor are substantially lower than the charges applied on grain for other shippers.

The Cooperative Allied Grain Dealers Corporation elevator at Seneca is operated under a so-called lease with the Continental Grain Company which is, as a matter of fact, a contract of purchase. The so-called lease provides that on all grain moving through this elevator the purchaser shall pay 0.5 cent per bushel to the Continental Grain

Company, and, further, that all such grain must be sold exclusively to the latter. If any of this grain is sold to interests other than the Continental Grain Company, the lease may, at the option of the lessor, be abrogated, in which event the amount paid in is to be considered as rent rather than as an equity in the elevator.

On grain hauled to Chicago in the Allied Barge Corporation's barges (which is exclusively Cooperative Allied Grain Dealers Corporation grain), the latter allows the former 0.75 cent per bushel for the use of the barges. Based on this figure, and the total amount of corn hauled to Chicago in these barges during 1939, 4,358,225 bushels, that barge line received $32,686.68, or an amount nearly equaling the entire cost of the barges.

Neither the Allied Barge Corporation nor the Cooperative Allied Grain Dealers Corporation has ever secured a certificate of convenience and necessity from us or from the Illinois Public Utilities Commission, nor have they filed any tariffs showing rates or made any annual reports to either commission. Their barge services are not open to the public. The exclusive business of this barge line is the leasing of its barges to the Cooperative Allied Grain Dealers Corporation. Neither of these corporations has any agreement with respondents with respect to the shipment of grain beyond Chicago. It is clear that the transportation services performed by or for these corporations is contract carriage, and that neither is a common carrier.

Admittedly the Federal Barge Line is a common carrier, but this line has hauled little if any grain to Chicago from origins on the Illinois Waterways here considered. No evidence was presented as to the common-carrier status of other independent barge lines hauling grain to Chicago over the Illinois Waterways.

Under section 6 (13) (c) (now section 6 (11) (b)) of the act, we have jurisdiction to prescribe proportional rail rates on traffic which has been hauled to a port or is carried from a port by a common carrier by water. This record is replete with complexities and technicalities, and does not contain sufficient information to warrant prescribing proportional rates on traffic arriving at the rate-break points in common-carrier boats.

Board of Trade rules.—Under normal circumstances grain bought in the Chicago cash market (that is, for immediate delivery or delivery within 10 days) is always hedged, which means that a sale is immediately made on a futures market. For example, corn that is bought on the cash market in January is immediately hedged with a sale requiring delivery in May. Under the rules of the Chicago Board of Trade, the hedge requires delivery to the purchaser of billing which will entitle him to move the grain out of Chicago on the proportional rates here in issue, or, in the alternative, pay the purchaser the difference between the out-bound local and the proportional rate. Hedged

grain under a board rule must be delivered from a public elevator. Under present practice, ex-barge grain is registered with the Central Inspection and Weighing Bureau so as to engage the application of the proportional rates, but under the proposal, such registration will be denied ex-barge grain. Therefore it is claimed that it will not be possible to hedge the grain, and that if the commodity is moved out to eastern destinations it will be forced to move out under the local rates or by lake. In many instances, however, the hedge is never consummated, but instead is bought back. Under such circumstances the board rule would not be operative.

All grain sold on the Chicago market is subject under the board rule to a commission charge of 1 cent per bushel when it moves in by rail and 0.5 cent per bushel when it moves in by water, which must be paid to Board of Trade members, who are either commission men or direct buyers.

All grain moving into Chicago and sold on the Board of Trade must, according to its rules, be weighed, graded, and inspected by a sworn weighmaster and by certified inspectors under the supervision of the board, and the single charge for these three services is 0.25 cent per bushel.

In addition, the rules of the board require that on grain arriving at Chicago by boat, the shipper must bear the unloading charges. In unloading barges into elevators, certain labor is required to move the grain up to the marine leg through which it is elevated into the grain house. The charge for this service is 0.35 cent[3] per bushel and is called the trimming charge. In this respect delivery by boat differs from delivery by rail, for in the latter instance the shipper never pays for unloading a car; instead, the cost therefor is assumed by the consignee.

All of the rules of the Board of Trade mentioned in the preceding paragraphs are trade or commercial practices which have a definite bearing upon the purchase price of grain bought through this market and have been stated because of this fact, but these rules have no direct bearing whatever upon the legality of respondent's proposed schedules. (*Boren-Stewart Co.* v. *Atchison, T. & S. F. Ry. Co.*, 19 I. C. C. 120, 125.)

Chicago elevator capacity.—The elevator capacity of the Chicago market is approximately 50 million bushels of grain; the Chicago protestants in the instant proceeding control elevators having a capacity of about 32 million bushels. The public storage capacity of the Chicago elevators is approximately 25 million bushels, and all of this is controlled by the Chicago protestants. Public storage is the space in public elevators available to anyone wishing to use it. The charge

[3] Sometimes referred to as 0.38 cent per bushel.

for transfer of grain through public elevators is 1.5 cents per bushel, including 10 days' free storage. When the buyer of a hedge requires delivery of the grain, for instance, at Indianapolis, Ind., the buyer must pay an additional charge for transfer from the elevator to the car, which in that case would be 1.25 cents per bushel.

Effect of barge versus rail delivery costs at Chicago upon the producer.—Eight farmers and country elevator operators adjacent to or within trucking distance of the Illinois Waterways, who had little or no knowledge of the proportional rates east of Chicago here in issue, testified in support of protestants. The gist of this testimony is that prior to the inauguration of barge transportation on the Illinois Waterways, the prices they received for their rail grain ranged from 9 to 10 cents per bushel under the Chicago quotations, whereas today, with barge transportation available, they receive prices ranging from 5 to 7 cents per bushel under such quotations.

On the other hand, 13 farmers and country elevator operators not adjacent to the Illinois Waterways testified that when the Illinois intrastate rates on corn were reduced, they were able to move their corn through local elevators and over rail routes to Chicago in competition with the truckers, but that since the opening of the Illinois Waterways provided the cheaper barge-transportation costs to Chicago, the truckers have reversed the haul, and now truck the grain from the farms directly to the waterways.

The following table shows what the farmers actually receive for corn, using various modes of transportation to Chicago, on a Chicago bid of 55 cents per bushel.

From Morris, Ill., to Chicago, Ill	Direct river buying, using barge to Chicago	Country elevator using barge to Chicago	Trucked direct from farm to Chicago	Country elevator using 5-cent intrastate rate	Country elevator using 9.5-cent I. P. rate
	Cents	*Cents*	*Cents*	*Cents*	*Cents*
Truck cost, farm to local market	1	1	0	1	1
Local buyer expense	0.25	2	0.25	1.5	1.5
River-elevator expense	1.5	1.5	0	0	0
Freight to Chicago (per bushel)	1.75	1.75	5	2.8	5.34
Trimming charge (at Chicago)	0.38	0.38	0	0	0
Commission charge (at Chicago)	0.5	0.5	1	1	1
Weighing, grading, and inspection charge (at Chicago)	0.25	0.25	0.25	0.25	0.25
Discount, account in-bound billing not good in connection with reshipping or proportional rates east of Chicago	0	0	0.5	0.5	0
Total	5.63	6.38	7	7.05	9.08
Chicago market price	55	55	55	55	55
Costs incident to making delivery at Chicago, plus discount, where applicable	5.63	6.38	7	7.05	9.08
Price paid to farmer (per bushel)	49.37	48.62	48	47.95	45.92
Amount accruing to farmer in excess of I. P. method amount	3.45	2.70	2.08	2.03	00.00

[1] Illinois intrastate rail rate.

The Finnegan Elevator Corporation and the Finnegan Elevator Company, operating an elevator completed in 1934 at Patonville, on the south bank of the Illinois River opposite Morris, first established the practice of having the grain brought directly from the farm to the river elevator instead of handling the grain through country elevators. Most of the grain run through this elevator is transported by the Mechling Barge Line. The witness for these firms explains that prior to the inauguration of the barge service and the establishment of river elevators, an increasingly large amount of grain was being bought in this area by truckers at prices higher than country elevators located on railroads could pay, and that grain so purchased was being trucked directly to Chicago or to processors at Decatur, Ill., and other points.

These interests particularly stress the fact that grain originating at Kansas City and moving on filed rates to Chicago, which under the suspended schedules will still be able to move east on the proportional rates, may be towed alongside a barge containing grain moving on unfiled rates from the Patonville elevator which, under the proposal, will be denied the application of those rates. This, they allege, will result in unjust discrimination against Patonville grain and undue preference in favor of the Kansas City grain. In reply to this allegation, respondents point out that the rate on Kansas City grain reshipped from Chicago to Cleveland, Ohio, for example, pays 3 cents less than if it originated at Minneapolis, Minn., although the cars carrying the Kansas City and Minneapolis grain may be in the same train out of Chicago.

The Inland Waterways Corporation, operating the Federal Barge Lines, hereinafter called the barge line, is also a protestant in this proceeding. Its position is that (1) the rates which will become applicable on unregulated ex-barge traffic as a result of the proposed schedules will be excessive to the extent that they exceed the rates contemporaneously applied on ex-lake grain transported on unfiled rates; (2) the proposed rates on ex-barge traffic will be excessive by comparison with rates on ex-rail grain from the reshipping points to the same destinations; (3) application of higher rates on ex-barge traffic than on ex-rail traffic is unjustly discriminatory, and unduly prejudices the barge line; and (4) it is illegal to restrict proportional rates on grain so as to make them inapplicable on ex-barge grain unless the rates of the water carriers are on file with us.

This position amounts to an allegation that the proposed schedules will violate sections 1, 2, and 3 of the act. As to section 1, as will be later explained, the rates resulting from the proposed schedules are substantially lower than rates which we have prescribed or found not unlawful on grain within official territory. In *Ex-River Grain from*

St. Louis to the South, 203 I. C. C. 385 (petition for reconsideration denied), wherein this protestant also made the same contention as to the section 2 allegation. Division 3 found that the service in the cases of ex-rail and ex-water transportation is not made under substantially similar circumstances and conditions. Section 3 of the act is not applicable to carriers that do not come within our jurisdiction. *Nicholson Universal S. S. Co. v. Pennsylvania R. Co.*, 203 I. C. C. 637, 206 I. C. C. 563; *Ex-River Grain from St. Louis to the South*, *supra*. Under the Interstate Commerce Act, as amended September 18, 1940, section 3 (1) of part I, undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful. Part III of the act, applicable to water carriers, is substantially similar. It follows that the prejudice alleged by the barge line, even if it existed, is not unlawful. As to position (4) it is sufficient to point out that in the proceeding last cited, ex-rail rates lower than ex-barge rates were found justified.

No grain traffic moved over the barge line to Chicago from the Illinois points referred to during the years 1938 and 1939 except 2,245 tons from Pekin during 1938. This is due to the lower charge made by competing barge lines. This barge line has no common arrangement with respondents for a through route, nor has a formal arrangement been entered into with them in connection with filed or unfiled barge rates. The suspended schedules, if permitted to become effective, would not of themselves constitute such an arrangement.

The Mississippi Valley Association, a protestant in this proceeding, is said to be devoted to the economic welfare of all people in the valley. It maintains that ex-barge grain should have the benefit of reasonable proportional rates over rail routes east of the rate-break points. Its witness states that the position of the association is that growers of grain who are so located that barge transportation is not available to them, nevertheless are profiting as a result of the lower costs on the Illinois Waterways, because (1) the farmer moving his grain by water out of the Illinois Valley receives a higher price for his grain; (2) such grain has outlets at Chicago, New Orleans, or the Pacific coast, and as a result broader markets at higher prices are found than if the waterway did not exist; and (3) the remaining grain that cannot use the waterway—that must be shipped by rail—has just that much less grain to compete against, and because of this it is argued that the farmer away from the waterway is able to obtain a higher price. The instant record supports the first point, but there is no showing here that the New Orleans or Pacific coast price of grain is any different, or higher, than the Chicago price, and as to the third point the evidence shows that all grain purchased in this market is either sold on the f. o. b. or c. i. f. Chicago market price.

Upon this subject, but more particularly with respect to corn, grain interests located at Decatur, Ill., and Indianapolis, Ind., point out that because of the low barge rates into Chicago they have been unable to buy corn in the Illinois Valley. As a result they have been forced to come into the Chicago market for their corn, instead of buying direct, thus imposing on such grain the incidental charges accruing in the Chicago market.

The United States Department of Agriculture, the attorney general of the State of Illinois, and the Illinois Commerce Commission, although represented at the hearing, took no active part in the proceeding. On argument, counsel for the Department of Agriculture was more concerned with the farmer's opportunity to secure lower rates by reason of the availability of water transportation than with respondents' justification of the suspended rates or questions relating to sections 1, 2, and 3 of the act.

Grain moving into Chicago by motortrucks.—The statistics previously given show that a considerable quantity of grain received in the Chicago market is trucked in. Such grain is not, and never has been, accepted for registration nor accorded transit, and, therefore, has not been able to engage the proportional rates here in issue. As a result, the grain that has been trucked in has been consumed locally or has moved out by lake. At least one firm operating an elevator on the water but not equipped to unload barges deals largely in trucked grain. This firm is also a protestant in this proceeding. Its grain arriving at Chicago by motortrucks originates in the same area as the barged grain. Both trucked and barged grain is sold in the same consuming territory. Under such circumstances it is contended that there is no good and substantial reason why respondents unduly prefer ex-barge grain to the undue prejudice and disadvantage of trucked grain. Trucked grain as well as ex-barge grain moves on unfiled rates.

Position of the western rail lines.—These lines maintain that the purpose of establishing the intrastate rates on corn, under which transit is prohibited, was to meet unregulated barge competition. The practice of respondents in permitting transit and the application of the proportional rates east of Chicago on ex-barge traffic has had the effect of nullifying the western rail lines' efforts. In support of this fact it is shown that during the years 1935 to 1938, both inclusive, The Chicago, Rock Island and Pacific Railway Company transported over its line to Chicago from Morris, the most important barge shipping point, 480, 802, 572, and 753 carloads of corn, respectively; but that in 1939 it had, up to November 30, transported only 44 carloads.

The western rail lines also take the position that the proportional rates here in issue were never properly applicable on ex-barge traffic originating at points on the Illinois Waterways, because when they

were originally published by respondents, and later fixed by us so far as destinations in central territory were concerned, they were established as equalizing factors of the through all-rail grain-rate structure from the West to the East. As originally published, the so-called "Northwest" proportional rates from Chicago applied on grain originating at points in northwest territory which was specifically defined, and did not include any origin points in Illinois.

The western lines, supported by the respondent eastern lines, also contend that if application of the proportional rates is to be continued on unregulated ex-barge traffic, the result will be a breaking down of the established through grain-rate structure from West to East. The evidence already detailed with respect to the inability of the reduced intrastate rates on corn to accomplish their purpose in meeting the competitive barge charges supports this contention.

Counsel for the western roads also introduced as an exhibit in this proceeding the Illinois Public Utilities Act. Under that act it is provided that every public utility shall file with the Illinois Commerce Commission, and shall print and keep open to public inspection, schedules showing all rates and other charges. It has already been shown that the independent barge lines handling the bulk of this grain traffic from origins on the Illinois Waterways file no schedules showing rates and make no annual reports to the Illinois Commerce Commission. Obviously they do not consider that they are public utilities or common carriers within the meaning of that act.

Proportional and local rates from Chicago to representative eastern destinations.—The following table shows the short-line rail distances, the proportional rates under their varied applications, and the local rates on grain from Chicago to representative destinations in central and trunk-line territories.

Rates in cents per 100 pounds

From Chicago, Ill., to—	Short-line distance	Separately published rate factors				Local rate
		Trans-Mississippi (note 20)	Northwest (note 40)	Reshipping (note 45)	Proportional (note 20)	
Central territory:	*Miles*	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Indianapolis, Ind	180.9	11.5	14.5	12	.....	17
Detroit, Mich	266.5	12.5	15.5	15	.....	17
Circleville, Ohio	320.7	14.5	17.5	19	.....	25
Pittsburgh, Pa	454	18.5	21.5	20	.....	28.5
Buffalo, N. Y	498	18.5	21.5	20	.....	28.5
Trunk-line territory						
Baltimore, Md	761				[1] 23	[1] 31.5
					[2] 16	[2] 24.5
Philadelphia, Pa	10				[1] 24	[1] 32.5
					[2] 16.5	[2] 25
New York, N. Y	880				[1] 26	[1] 34.5
					[2] 17.5	[2] 26
Boston, Mass	972				[1] 28	[1] 36.5
					[2] 17.5	[2] 26

[1] Domestic [2] Export

As previously stated sometime after this grain traffic began moving up the Illinois Waterways, respondents construed their schedules so as to permit application of the "Northwest" (note 40) proportional rates on traffic to central territory, and the "Proportional" (note 20) rates to trunk-line and eastern territories. It will be observed that the proportional rates from Chicago to central-territory destinations on grain originating in trans-Mississippi River territory are uniformly 3 cents less than the proportional rates applicable on traffic originating in Northwest territory, thus maintaining the equalization prescribed in *Southwestern Millers' League* v. *Atchison, T. & S. F. Ry. Co.*, 173 I. C. C. 86, 227 I. C. C. 795, 231 I. C. C. 130, and that if the suspended schedules are found justified, resulting in the application of the local rates, the increases in the rates to the central-territory points named *would range from* 1.5 to 7.5 cents, and to the eastern points named the increase would be uniformly 8.5 cents.

The Chicago protestants and others maintain throughout this proceeding that little or no grain would move east of Chicago on the local rates, because in their opinion such rates are unreasonably high. In support of this contention, the local rates are compared with the average revenue secured by the rail carriers from all freight handled for its average distance. We have many times found that comparisons of this character furnish no measure of the reasonableness of rates on a particular commodity. Refuting the allegation of unreasonableness, respondents point out that these local rates range from 17.3 to 25.7 percent of first class and are substantially under the level of the sixth-class rates (27.5 percent of first class) which we have found, in the reports cited in the footnote,[4] to be a maximum reasonable basis or not unreasonable or otherwise unlawful, on grain and grain products within official territory.

For comparative purposes, respondents presented figures compiled by the Central Inspection and Weighing Bureau showing that during the period from May 1 to November 30, 1939, there were received at Chicago over rail routes for registration 16,771 carloads of corn, of which 2,351 carloads (about 14 percent of the receipts) moved out on the proportional rates to central and trunk-line territories, 9,503 carloads (about 57 percent of the receipts) moved out over lake, 201 carloads moved out to other destinations, and 1,032 carloads were disposed of locally, leaving a balance on hand of 3,684 carloads. During the same period the equivalent of 7,305 carloads of corn were moved into

[4] *Indianapolis Board of Trade* v. *Baltimore & O. R. Co.*, 129 I. C. C. 675; *Grain & Grain Products*, 144 I. C. C. 497; *Valley Grain Co., Inc.*, v. *Cleveland, C. C. & St. L. Ry. Co.*, 159 I. C. C. 223, 167 I. C. C. 196; *Co-operative Elevator Co.* v. *Wabash Ry. Co.*, 192 I. C. C. 583; *Goldcamp Mill Co., Inc.* v. *Akron, C. & Y. Ry. Co.*, 195 I. C. C. 329; *Grain and Products to Chesapeake & O. Branch Lines*, 196 I. C. C. 751; and *Allen & Wheeler Co.* v. *Akron, C. & Y. Ry. Co.*, 225 I. C. C. 179.

Chicago by barge from the Illinois Waterways for registration with the bureau, of which 1,160 carloads (about 16 percent of the receipts) moved out on the proportional rates to central and trunk-line destinations, 5,183 carloads (about 71 percent of the receipts) moved out via lake, and 235 carloads were disposed of locally, leaving a balance on hand of 727 carloads. Respondents show that during the same period 792 carloads of the corn moving into Chicago over rail routes which were moved out of that market under the proportional rates to the East originated at points in the State of Illinois within the territory previously defined. Freight charges on these 792 carloads moving into Chicago were on basis of the intrastate rates which were established to meet truck and barge competition. The tariff publishing these rates specifically states that no transit privileges will be accorded. Nevertheless, the evidence shows that tonnage moving into Chicago on these rates was *registered with the Central Inspection and Weighing Bureau*, without any tariff authority therefor, and that if the commodity was reshipped to the East under the proportional rates, the western roads handling the in-bound shipment billed the shipper for the difference necessary to protect the Illinois interstate rates, in connection with which transit privileges are available.

Rules and regulations covering application of proportional rates.—The measure of the proportional rates east of Chicago and related gateways is not in issue here, that matter, so far as destinations in central territory are concerned, having been determined in *Southwestern Millers' League* v. *Atchison, T. & S. F. Ry. Co., supra*. In the latter report (251 I. C. C. 130), speaking with regard to the question of equalization, the following statement was made:

> Kansas City is in what is known as trans Mississippi River origin territory, and Minneapolis is in northwest territory. To most of the destination territory we required a parity of through rates from Minneapolis and Kansas City on traffic from beyond. This was accomplished by making the factors of the combination rates 3 cents higher, beyond Chicago and other related eastern gateways (the one factor through rates being in effect), on traffic from beyond Minneapolis, than on traffic from beyond Kansas City, because of the in-bound rates to Chicago 3 cents less from Minneapolis than from Kansas City.

In *Peoria Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 55 I. C. C. 42, 50, reference was made to *State of Iowa* v. *Baltimore & O. R. Co.*, 46 I. C. C. 595, 599, wherein it was found that proportionals which vary with points of origin or destination were not unreasonable, unduly prejudicial, or otherwise unlawful.

In the schedules here considered which are held in force by reason of the suspension, the rules relative to the application of the proportional rates east of Chicago, Peoria, and other related gateways to destinations in central territory are somewhat different from those applying in connection with the proportional rates to destinations in

trunk-line territory. For example, using the Chicago gateway, there are three separate levels of proportional rates to central-territory destinations, which are designated respectively, "Trans-Mississippi" "Northwest (See Note 40)," and "Reshipping (See Note 45)," in addition to the local rates applying from Chicago proper. On the other hand, the schedules applying on domestic and export grain from Chicago to trunk-line destinations carry only one proportional application (that is, note 20) in addition to the local rates. In appendixes II and III to this report there have been set forth the relevant portions of notes 40, 45, and 20.

For the purpose of engaging the application of the proportional rates, all of the notes previously referred to specifically provide:

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission

The rate tariffs here considered also publish the following provisions, applicable to central territory and trunk-line territory respectively, hereinafter called the limitation rules:

APPLICATION OF PROPORTIONAL RATES.

Proportional rates named herein, which by their terms are limited in their application to traffic destined to, or originating at, specific points or territories including rates which are published for application on traffic "from beyond" or "when destined beyond," are applicable only when the entire movement is performed by rail carriers or water-and-rail carriers, under rates lawfully on file with the Interstate Commerce Commission.

The foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic. (C. F. A. No. 2191.)

APPLICATION OF PROPORTIONAL RATES.

Proportional rates, as named herein, which by their terms are limited in their application to traffic originating at specific points or territories, including rates which are published for application on traffic "from beyond," are applicable only when the entire through movement is performed by rail carriers or water and rail carriers, under rates lawfully on file with the Interstate Commerce Commission, or State Commissions.

The foregoing is not to affect any rates now published carrying provision that such rates are applicable on ex river or ex-lake traffic or on traffic forwarded by river, ocean or lake from the port.

At a meeting of the representatives of the eastern lines held during the month of November 1934, the question was presented whether these proportional rates applied on ex-barge traffic, and it was decided that they had no such application. On January 18, 1935, another meeting was held, and the action previously taken was reversed.

It was the position of the protestants and of certain of the respondents on the record that the second paragraphs of the rules above quoted not only nullify the provisions of the first paragraphs, but render

inapplicable any rule or application in the rate tariffs, or any provision in the transit tariff, which would otherwise have the effect of prohibiting the application of these proportional rates on ex-barge traffic originating on the Illinois Waterways.

An examination of the rate tariffs shows that the second paragraphs of these rules were first published contemporaneously with the inauguration of the movement of grain in barges over the Illinois Waterways.

The Board of Trade view, concurred in by protestants and certain respondents, is that when the limitation rules were amended so as "not to affect any rates now published carrying provision that such rates are applicable" on ex-river or ex-lake traffic, this action amounted to an exemption, not only bringing about uniform application on both ex-river and ex-lake traffic, but also nullifying that portion of the notes explaining the application of the proportional rates (shown in appendixes II and III) reading, "that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination." It appears that the latter provision has always been waived on ex-lake traffic, and that it has been waived on ex-river traffic since such traffic developed. But it is maintained that the modification of the limitation rules did not nullify that portion of the notes in the rate tariffs subjecting such rates to the "transit rules and regulations" lawfully on file with us. This position is taken because the transit rules must be observed to provide the necessary policing and keeping of the records and to see that proper in-bound billing is surrendered so as to engage the application of the out-bound proportional rates. As to a provision in the transit tariff that "shipments delivered to transit houses will be subject to full tariff rates of in-bound carriers," it is also contended that the ex-river exemption in the limitation rules is sufficient to warrant disregard of this provision; and that a transit rule to the effect that "the through rate to be applied shall be the lawfully published rate through from the original point of shipment to final destination in effect at the time of initial shipment from the origin" cannot possibly change the value of the rate that is published in the tariff.

Concisely stated, the contention of these interests seems to be that to the extent that the rate or transit tariffs place restrictions upon the character of the rates, they have no application on ex-river grain, because of the modification of the limitation rules; but that in all other respects the notes published in connection with the application of the proportional rates, and the transit rules must be strictly observed.

Unquestionably, the first paragraph of the limitation rules is clear and unambiguous, is in accord with section 6 (7) of the act, and is

in harmony with our views as expressed in many prior reports. As early as May 10, 1909, in *Kansas City Transp. Bureau* v. *Atchison, T. & S. F. Ry. Co.*, 16 I. C. C. 195, 201, we said:

> A proportional rate means a part of or a remainder of the through rate or it means nothing at all, and in a case of this kind there must be an examination and consideration of the entire rate from point of production to ultimate destination. [Cited with approval in *Hocking Valley Ry. Co.* v. *Lackawanna Coal & I. Co.*, 224 Fed. 939.]

In *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 63 I. C. C. 185, 188, decided June 15, 1922, division 3 said:

> We have in numerous cases considered reshipping and proportional rates by whatever name called, and it is well settled that they are inseparably connected with and form parts of the rates applying to through transportation. [Cited with approval in *Lorabee Flour Mills Corp.* v. *Atchison, T. & S. F. Ry. Co.*, 148 I. C. C. 5, 9; and *Baptiste Bay Co.* v. *Chicago, B. & Q. R. Co.*, 157 I. C. C. 626.]

And in *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, 575, decided July 29, 1939, we further clarified the former expressions and said:

> We have found that a proportional rate is one which applies to a part of a through transportation *which is entirely within the jurisdiction of the Interstate Commerce Act*, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. [Emphasis supplied.]

The only traffic excepted by law from this requirement is that subject to section 6 (11) (b) of the act, which is limited to common carriers by water. It is elemental that a proportional factor is but a part of a through rate. It follows that the proportional rate and the rate with which it is combined to make a through rate must be on file with us. Otherwise, as is clearly demonstrated in this proceeding, regulated carriers, by the simple expedient of publishing lower than local rates and designating them "proportional," will be free to defeat the primary purpose of the act, which is to cut up by the roots every form of discrimination and inequality. (*Louisville & N. R. Co.* v. *Mottley*, 219 U. S. 467.) It is also significant that the unregulated barge charges may be changed with or without any notice.

The parties cited several cases in support of their contention that proportional rates may be applied on traffic coming from or going beyond a reshipping point by other than common carriers by water. On argument, the question arose as to the justification for lower rates on import traffic arriving at the port by unregulated carriers than on domestic traffic, and in this connection reference was made to *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, wherein the court, among other things, held in effect that we should

have taken into consideration the ocean transportation up to the port when deciding the lawfulness of import rates lower than contemporaneous domestic rates. Pertinent to such admonition, Justice Frankfurter in *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, used the following language:

> Constitutional provisions are often so glossed over with commentary that imperceptibly we tend to construe the commentary rather than the text.

The language of section 6 (11) (b) is plain and unambiguous. Its application is confined to proportional rail rates on traffic brought to or carried from the port by a common carrier by water. In *Cast Iron Pipe and Fittings*, 174 I. C. C. 459, at page 471, division 5 concluded that proportional rates which are intended to apply beyond the ports not only by common carriers by water but also by private carriers do not fall within the definition of a proportional rate as set forth in section 6 (13) (c). We agree, with the further observation that the section alluded to can have no application whatever except in connection with common carriers by water. Since the second paragraph of the limitation rules is not restricted to apply in connection with common carriers by water, it finds no support in the act, and we can give it no weight in the determination of the issues here involved.

In respondents' reply to protestants' exceptions it is admitted that this limitation rule can in no sense be regarded as authority for the application of any certain rate levels.

Irregularities in registration of billing.—It has already been pointed out that on carload shipments of corn moving into Chicago on the intrastate rates, transit is prohibited. The Chicago protestants in this proceeding submit such intrastate rail billing, which the Central Inspection and Weighing Bureau accepts for registration. Notwithstanding the claim that when such registered tonnage moves out on the proportional rates, the difference between the in-bound intrastate and the interstate rates should be collected, there is no specific tariff authorization for this practice. The instant record is clear on this point. This is a plain violation of section 6 (1) of the act, which requires, among other things, that every common carrier subject to the provisions thereof shall file with us schedules showing separately all privileges or facilities granted or allowed and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the shipper, or consignee. The practice should be discontinued or an appropriate rule published.

In support for the practice above explained, respondents, on exceptions, cite *Swift & Co. v. Atchison, T. & S. F. Ry. Co.*, 227 I. C. C. 579, which we find to be plainly distinguishable. In that proceeding, 227 I. C. C.

at page 585, it was pointed out that the transit rules did not preclude application of through rates in instances where in-bound shipments to transit points moved intrastate, whereas in the proceeding now considered, the rate tariff publishing the in-bound intrastate rates to Chicago specifically prohibits transit arrangements. Since the corn moving into Chicago on intrastate rates is not available for transit, Chicago is its final destination. It follows that the local rate beyond Chicago applies in the absence of a tariff provision preserving the fictional through movement. *Boynton Hay Co.* v. *Chicago, B. & Q. R. Co., supra.*

Appendix IV shows three so-called barge freight bills on grain moving into Chicago and a representative in-bound lake bill of lading. The disposition of the out-bound tonnage in connection with each in-bound shipment is also shown. The first bill covers a shipment which was transported from La Salle to Chicago in a barge of the John I. Hay Company. It does not disclose the name of the commodity transported but shows the total amount paid in, based on a charge of 1.5 cents per bushel (equivalent to 2.68 cents per 100 pounds). It will also be observed that the transit shipping directions do not show the "Rates Paid in," required by the rate and transit tariffs. On the other hand, where a shipment moves into Chicago by rail, the shipping directions always show the rate on the in-bound tonnage which was registered with the Central Inspection and Weighing Bureau.

The second bill covers a representative in-bound freight bill on a shipment of oats and beans made by the Cooperative Allied Grain Dealers Corporation from Morris to Chicago in a barge belonging to the Allied Barge Corporation which was towed by the Mechling Barge Line. As previously stated, the evidence shows that the Allied Barge Corporation is in the sole business of leasing its barges to the Cooperative Allied Grain Dealers Corporation. It is not understood how a bill for transportation charges could be issued in the name of the Allied Barge Corporation, which is not in the transportation business. It is not satisfactorily explained on the record, on exceptions, or at oral argument under what theory of transit such a bill was accepted for registration by the bureau.

The third bill shows a paper which was made out in the offices of the Norris Grain Company, the consignee, which was accepted by the Central Inspection and Weighing Bureau as a freight bill covering a shipment of corn which moved in a Mechling barge from Chillicothe to Chicago. This tonnage was registered by the bureau notwithstanding the fact that the bill does not show the charge or amount paid in and is merely endorsed "Prepaid," although it is admitted that the charges were not paid when the document was registered. This is said to be the general practice of the Norris Grain Company.

The appendix furthermore shows a "Lake Grain Bill of Lading" covering a shipment of rye transported from Duluth to South Chicago which was registered by the bureau, although such registration is not necessary under the rules of the transit tariff.

Interpretation of rate tariffs (Notes—to central territory).—All of the present notes in these schedules provide in part that the proportional rates will apply on grain reaching—

> the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point

and the notes in the proposed schedules read substantially the same, except that the words "or water" are eliminated. In addition to maintaining at the hearing that the limitation rules permit application of the rates here in issue, the parties also maintain that ex-barge traffic originating on the Illinois Waterways complies with the clause which has just been quoted. It has already been explained that in certain instances the in-bound billing on this ex-barge traffic fails to show any rate or charge whatever. Through long custom and usage, freight bills are issued by carriers and show among other things the name of the shipper and consignee, the origin and destination, the name of the commodity shipped, its weight, the rate or charge, and whether the charges were prepaid or collect. The papers covering the in-bound barge movement are deficient as freight bills "or like documentary evidence" in that in many instances they are made out by the consignee, they do not show the name of the shipper, some fail to name the commodity, the rate or charge for the barge transportation is not always shown, and in some instances the bills are marked "prepaid" although this is not a fact. The papers filed as in-bound billing on ex-barge traffic, which were registered by the Central Inspection and Weighing Bureau, may not properly be considered as freight bills or like documentary evidence as required by these notes.

We construe the words "or water" transportation lines appearing in all of these notes (which words have been eliminated in the proposed schedules) as having reference only to water transportation lines filing rates for such transportation with us, such, for example, as the Federal Barge Lines, the Illinois River Packet Company, or the Spring Lake Packet Company. This interpretation is based on the mandatory provision of section 6 (7) of the act that no carrier may engage or participate in transportation unless the rates, fares, and charges have been published and filed. Clearly it would be difficult if not impossible for us to determine the lawfulness of a proportional or reshipping rate if the other factor of the through rate were not filed here and within our jurisdiction. Therefore, without legislative authority, respondents cannot defeat their own local rates by publication

of so-called proportional rates, or rates in the nature of proportional rates, for use in connection with unpublished rates over which we have no jurisdiction.

All of the present and proposed notes provide "that in no case shall the combination through rates to and from the reshipping point be less than the local rate from the reshipping point to destination." It is obvious that if the in-bound rate is not published, filed, and shown on the registered freight bill, as is the case here, there would be no way by which respondents could determine whether the legal rate had been applied. Although the fourth section of the act does not apply to unregulated water carriers, the evidence here shows that the application of the barge rates to Chicago plus the rail proportionals beyond bring about evasions of the principles rather than violations of that section. For example, such combinations result in lower through charges to the Atlantic seaboard than the local rail rates to the same destinations from intermediate origin points on: (1) Domestic grain from all points in central territory (Chicago and east) west of a line drawn from Bay City, Mich., through Jackson and Sturgis, Mich., and Kendallville, Fort Wayne, Marion, Westville, Indianapolis, Greensburg, Ind., to Aurora, Ind.; (2) export grain from all points in central territory (Chicago and east) west of a line drawn from Atkins, Mich., through Oxford, Ann Arbor, Hanover, and Pittsford Junction, Mich., and thence along the Ohio-Indiana State line to the Ohio River; and (3) export traffic of barley, corn, oats, rye, and wheat from all points in central territory (Chicago and east) west of a line drawn from Painesville through Lordstown to East Liverpool, Ohio.

The application of the proportional rates to ex-lake grain, so far as this record shows, does not result in similar evasions.

The history of central territory note 40 (or a corresponding note) shows that from March 15, 1913, to June 28, 1935, at least as to certain lines, the "Northwest" proportional application out of Chicago on grain originating at points in Wisconsin, the Upper Peninsula of Michigan, and points west of the Minnesota-Wisconsin State line applied on shipments moving all-rail as well as "On shipments which arrive by boat lines at * * * Chicago, * * * *originating at any of the points in the above defined territory.*" Obviously this application could not apply on grain originating at any Illinois points.

The evidence shows that when grain began moving to Chicago on the Illinois Waterways, respondents first decided that no proportional application should apply on the ex-barge traffic. Upon further consideration, on January 18, 1935, their attitude was reversed. Thereupon the shippers and carriers questioned whether the Trans-Mississippi, the reshipping (Illinois), or the Northwest application to ex-

tral territory should be used. Different lines applied different applications, and to establish uniformity it was finally decided that the note 40, "Northwest" application should apply exclusively. Therefore, effective June 28, 1935, in an agency tariff, the first paragraph of note 40 to central territory was modified to read "Northwest Territory (as described below), *or as otherwise stated*" [emphasis supplied]; and the "otherwise stated" provision was added, reading: "On shipments which arrive by Boat Lines at Chicago * * *."

Effective August 25, 1935, the first paragraph of note 45 to central territory, which is the normal note covering grain originating in the State of Illinois, was amended in part to read "(except Illinois grain moving via water transportation line.)" Note 45 continues to apply on grain from points in the State of Illinois when the traffic originates on a rail line. This exception effectively blocked the application of note 45 on Illinois grain moving on the Illinois Waterways. In the proposed schedules, note 40 restores to all purposes and effect the application as published from 1915 to 1935.

From the above explanation it is clear that what respondents here propose to do is to clarify schedules which have been the subject of considerable controversy. The proposed schedules not only contemplate clarification of the schedules, but also have the effect of maintaining the existing grain-rate structure, which has already been partially disrupted in the State of Illinois. See *Corn Grits from Kankakee, Ill., to Battle Creek, Mich.*, 237 I. C. C. 413). If the ex-barge grain is permitted to continue to obtain the benefit of the proportional rates east of the rate-break points, that application will, because of fourth-section evasions, also disrupt the grain-rate structure as far east as Painesville and East Liverpool, Ohio, the latter being approximately 300 miles from Baltimore. Though the proposed schedules leave much to be desired, they are a step in the right direction.

Interpretation of rate tariffs (Notes—to trunk-line territory).—The notes under which the proportional rates to trunk-line territory are made applicable are substantially the same as those covering the application to central territory, and are interpreted in like manner, with three exceptions, namely:

1. Note 20 to trunk-line territory provides, among other things, that the local rate from the shipping point must be observed as a minimum, but the provision is modified so that it applies only when the entire movement is "via rail," which restriction is not found in the notes to central territory. The words "via rail" were added in 1924, and were evidently used to comply with the mandatory requirements of the long-and-short-haul provision of section 4 of the act so far as rail shipments are concerned; but when a movement is partly by water (on unfiled rates) and partly by rail, the principle of this part of section 4 is [illegible] C. C.

evaded. This clearly results in a discrimination against all-rail movements and in favor of water-rail movements.

2. Note 20 (to trunk-line territory) at present, and both note 20 and note 40 (to central territory) as proposed, specifically provide that the proportional rates will apply on ex-lake traffic, and, further, that such rates will apply as of the date shipments leave the reshipping points. Clearly under this provision there is no need to resort to a transit fiction, and, therefore, it is unnecessary to refer to any transit tariff. On the other hand, the present notes 20 and 40 contain no specific provision whatsoever for ex-barge traffic. The issue in this proceeding, as already shown, relates entirely to the proposal to eliminate the application of proportional rates on ex-barge traffic moving on unfiled rates; it does not involve ex-lake traffic. The ex-lake rates are discussed herein merely for the purpose of showing the differences between the central territory and trunk-line territory notes.

3. Although both note 20 and note 40 at present provide for the application of the proportional rates on shipments arriving "via a rail or water transportation line," note 40 further states that it "will only apply on such traffic when originating at points in Northwest Territory (as described below), *or as otherwise stated*." [emphasis supplied] which is subsequently defined "on shipments which arrive by Boat Lines at Chicago." Neither the present nor the proposed note 20 carries the two latter quotations. The proposed note 40 omits these quotations.

The Federal Barge Lines alleges that discrimination, prejudice, and preference will result if the application of the proportional rates is to continue on ex-lake traffic and to be discontinued on ex-barge traffic. In *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, 524, it was stated:

> To bring a difference in rates within the prohibition of section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services by their values, or by other transportation conditions.

In *Ex-River Grain from St. Louis to the South*, 203 I. C. C. 385, in determining a question of alleged discrimination claimed to result through denying proportional rail rates out of the reshipping point on ex-river grain moving into that point on unfiled rates while continuing to apply proportional rates on ex-rail grain, division 3 said, on page 390:

> It does not appear that respondents' proposal would be unjust to any shipper. The service in the transportation of the ex-rail and ex-water traffic is not under substantially similar circumstances and conditions. Proportional rates are factors

of through rates and such factors may differ with differences in origins or with differences in the character of transportation to the point from which the proportional factors apply.

It is asserted by protestants that the weight of authority is against the principle above stated, citing many of our reports and decisions of the United States Supreme Court as well as certain decisions of the English courts.[5] These same decisions were cited in a petition of the Inland Waterways Corporation, operating the Federal Barge Lines, for rehearing and reconsideration in the report from which the above quotation is taken, and after review by the entire Commission that petition was denied.

All of the suspended notes in the rate tariffs provide: "These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission." The effect of this provision, under well-accepted principles, is to incorporate all of the transit rules in the rate tariffs. Certain respondents and protestants contend that the language above quoted intends only that the "rules and regulations" relating to policing, and not all of the rules contained in the transit tariff, shall be used in connection with the proportional rates here considered. These "rules and regulations," according to these interests, do not specifically authorize transit. This contention cannot be sustained because, among other things, each of the rate tariffs also publishes an omnibus rule similar to that shown in the footnote[6] which specifically authorizes transit. Certainly the language used in the notes—"These rates are subject to transit rules and regulations"—cannot be construed as a "specific provision" contrary to the omnibus rule. Furthermore, the transit shipping directions issued for every car out-bound from Chicago carries a shipper's certificate reading "This is to certify that the tonnage listed under inbound is applicable to the commodity forwarded as provided" in the transit tariff, in addition to specific authorization by the Central Inspection and Weighing Bureau, as shown in appendix IV.

Counsel for respondents on oral argument made the following statement:

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[5] *Great Western R. Co. v. Sutton*, L. R. 4 H. L. 226; *Evershed v. London & N. W. R. Co.*, L. R. 3 App. Cas. 1029, 5 Eng. Rul. Cas. 351; *Denaby Main Colliery Co. v. Manchester, S. & L. R. Co.*, L. R. 11 App. Cas. 97, 6 Eng. Ry. & Co. Traf. Cas. 133, and 4 Eng. Ry. & C. Traf. Cas. 437.

[6] "In the absence of specific provisions in this tariff to the contrary, shipments transported under this tariff will be entitled to such allowances and privileges and subject to such charges, rules and regulations of originating carriers parties to this tariff, for property while in their possession, and of any intermediate or delivering carriers parties to this tariff, for property while in their possession, as are provided in tariffs lawfully in effect and on file with the Interstate Commerce Commission as to Interstate Traffic * * * for: * * * Transit Privileges."

We are not talking about transit privilege. We, out of Chicago, and east of Chicago, are only concerned with determination of the proper rate level to apply to the case, and there is a vast distinction, and I am sure the Commission is very familiar with it, between what we term as transit and what we term that movement through a rate-break market. In all the various rate cases this difference between the application of a transit provision and a through rate, and the application of a sum of proportional rates, and what may be done in a rate-break market has been thoroughly and clearly considered, and touched on.

This is the first time throughout this proceeding that an inference has been made suggesting any difference between transit on a through rate and transit on a sum of proportional rates through a rate-break market. We have in other proceedings pointed out the similarity between transit under joint through rates and transit at rate-break markets on combination rates. (See *Grain and Grain Products*, 215 I. C. C. 83, 90). Tariffs carrying into effect the rates prescribed in the proceeding just cited specifically authorize transit at rate-break markets. The evidence here shows that all of the ex-barge grain moves into the rate-break point and passes out of the possession of the in-bound carrier. Therefore its transportation has ceased, and the through movement may not be revived except through the fiction of transit.

The Chicago protestants maintain that the shipments here considered were not transited in the narrow sense but rather in the broad sense, which they claim would cover ex-barge-rail grain. This broad sense of transit, being a hybrid, partakes of some of the attributes of transit (policing rules, storage, treating, etc.) and some of the attributes of nontransit (no continuous through movement in fact or fiction). The novel "broad transit" theory must be rejected, because in the absence of a fictional bridge to preserve the continuity of movement, the only lawful rates to apply beyond the rate-break markets are the local rates. There can be no middle ground. *Red River Oil Co.* v. *Texas & P. Ry. Co.*, 23 I. C. C. 438, 446; *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, *supra*; and *Boynton Hay Co.* v. *Chicago, B. & Q. R. Co.*, *supra*.

Interpretation of the transit rules.—We have consistently applied the principle that transit arrangements rest upon the fiction that the incoming and outgoing transportation services, which are in fact distinct, constitute a continuous shipment of the identical article from point of origin to final destination. *Central R. Co. of New Jersey* v. *United States*, 257 U. S. 247. Under transit, there is a movement of a like unit of a particular commodity or its equivalent over a through route at a through rate from point of original shipment to point of ultimate destination. In *Baltimore & O. R. Co.* v. *United States*, 24 Fed. Supp. 734, it was said:

A "transit" is a stop-over privilege granted by a carrier, by which a break *de facto* in the continuity of carriage of goods is disregarded, and two legs of a journey are treated as though they were covered without interruption.

Insofar as this report is concerned, the principal transit rules involved in the applicable tariff are for convenience reproduced in appendix V.

Rule 61 is the cardinal rule in the transit tariff, and is the foundation upon which the fiction of transit rests. It unquestionably requires application of the lawfully published through rate.

Rules 7 and 11 require in clear and unambiguous language that the transit house, and not the Central Inspection and Weighing Bureau, must maintain records showing, among other things, the method of transportation used in-bound and out-bound, as well as whether the grain is transit or nontransit.

Rules 15 and 19 specify that shipments delivered to transit houses will be subject to full tariff rates of in-bound carriers, and require that the in-bound carriers' paid freight bills or boat manifests covering shipments subject to these rules shall be recorded with the Central Inspection and Weighing Bureau. Considering all of the provisions in the applicable tariffs, rules 15 and 19 must be construed to mean paid freight bills or boat manifests covering shipments moving under rates lawfully on file with us. (See section 6 (7) of the act.)

Rule 39 provides, first, that the Central Inspection and Weighing Bureau shall have access at all times to transit houses and records, and that it shall be its duty, among other things, (*a*) to cancel freight bills for like commodities in excess of the commodities in the house; (*b*) to keep book records of all in-bound freight bills and boat manifests; and (*c*) to insert on the transit shipping directions and in-bound freight bills the through rate, divisions, or proportional or re-shipping rate properly applicable. In the light of rules 15, 19, and 61, rule 39 can only be construed as affecting freight bills and boat manifests covering shipments moving in-bound and out-bound under rates lawfully filed with us.

It is clear that rule 39, when read with the rules referred to above, is sufficient, if complied with, to enable the Central Inspection and Weighing Bureau to fulfill its function of supervising transit and insuring assessment of the lawful rates and charges without assuming the burden of keeping nontransit billing records. Transit is mutually beneficial to carriers and shippers. Therefore, sharing the burden of keeping transit records cannot be said to be unreasonable. *Millsaps Cotton Co.* v. *Director General*, 62 I. C. C. 26; *Folding Furniture Works, Inc.* v. *Minneapolis, St. P. & S. S. M. Ry. Co.*, 227 I. C. C. 159.

Manifestly the transit houses, as well as respondents, handling this ex-barge grain on unfiled rates, cannot comply with the transit rules.

Consequently such grain is not entitled to any transit arrangement, and the movements in and out of the rate-break markets are separate and distinct. Once let it be conceded that the in-bound and out-bound movements are separate and distinct, the impropriety of applying any rates other than the regularly established local rates is obvious. *Red River Oil Co.* v. *Texas & P. Ry. Co., supra.*

Having determined herein that ex-barge grain moving on unfiled rates is not entitled to transit, it must follow that the application of any rates other than the regularly established local rates was and is illegal. The outstanding undercharges should be collected.

At the hearing, respondents and the Chicago protestants admitted that transit was necessary in order to engage the out-bound proportional rates. On exceptions or at oral argument these interests shifted their position, denying the necessity of transit. In addition, they contended at the hearing that the second paragraphs of the limitation rules previously quoted nullify any provisions which would otherwise prevent the use of these proportional rates on ex-barge traffic. Subsequently this contention was abandoned.

The evidence shows that in the past, in order to obtain the traffic, respondents have applied certain provisions of their schedules and overlooked other provisions, and that the protestants, in their interpretation of the schedules, emphasize favorable and brush aside unfavorable provisions. Practices of this character are indefensible. Where there is no ambiguity in the words of a tariff there is no room for construction. *H. C. King & Sons, Inc.*, v. *Michigan Central R. Co.*, 172 I. C. C. 477, 480, citing *United States* v. *Wiltberger*, 5 Wheat. 76, 95, 96. Shippers are bound by the words employed in a tariff, and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to a contrary construction. *Hill Motor Car Co.* v. *Michigan Central R. Co.*, 197 I. C. C. 259. To now conclude that the suspended schedules should be found not justified would, in effect, be recognizing a common arrangement between the barge lines and the rail carriers for a continuous through route, despite the fact that the evidence definitely shows none exists. A common arrangement cannot be inferred. *Proportional Grain Between Federal Barge Line Ports*, 225 I. C. C. 62, 69, citing *United States* v. *Munson S. S. Line*, 283 U. S. 43.

The application of the proportional rates here in issue on ex-barge grain has already broken down a portion of the Illinois grain-rate structure to Chicago, and an imminent break-down of the grain-rate structure east of Chicago is also indicated by the evidence. Tariffs on file here[7] show that during the pendency of this proceeding the

[7] Supplement 41 to C., I. & L. Ry. tariff I. C. C. 4559; supplement 60 to N. Y. C. R. R. tariff I. C. C. L. S. 1939, among others.

rates on corn have been substantially reduced within the State of Indiana, as well as from Indiana to Chicago and to certain stations in Ohio.

In *Boone* v. *United States*, 109 Fed. (2d) 560, the United States Circuit Court of Appeals (Sixth Circuit) found, among other things, that on shipments of corn moving from Chicago over the Federal Barge Lines to Memphis, Tenn., on unfiled rates, thence reshipped by rail to interstate destinations in the South, that the flat (local) rates beyond Memphis were applicable, and that the published proportional rates for this portion of the movement did not apply.

We conclude that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates, and find that the schedules under suspension are not shown to be unlawful. An order will be entered vacating the order of suspension, and discontinuing this proceeding.

ALLDREDGE, *Commissioner*, dissenting:

I am unable to agree with the conclusions of the report.

In the first place, I think the finding that the proportional rates in question have never been applicable on grain moving initially by barge to Chicago and other points mentioned is not properly within the scope of the issues in this proceeding. The issues directly presented here are limited to the lawfulness of the proposed rates, not of respondents' rates and practices at the present time or in the past. Nevertheless, the greater part of the report is given over to a discussion of the latter question. But if the relevancy and materiality of the finding should be granted or established, I think it is still without adequate support.

Furthermore, we are unable to determine the applicability of section 6 (11) (b) because the record is not sufficient to permit of a definite conclusion as to whether or not the barge lines occupy the status of common carriers. But a finding relating to the applicability of rates cannot be predicated upon a defect in the record.

The findings are also self-contradictory. If the proportional rates were never applicable on the traffic under consideration, how then can we proceed consistently to find on this record that their cancelation is justified? I agree that respondents' tariffs are subject to criticism. They are in a state of confusion and uncertainty. The record, however, is lacking in evidence sufficient to justify a finding that the proportional rates have never been applicable on the traffic considered, thus calling for the collection of large sums of money as undercharges. Such a finding, in practical effect, is equivalent to an award of damages and should therefore rest upon evidence as definite and certain as is required when such an award is affirmatively made.

Another important error in the report as I view it concerns the construction and application of section 6 (11) (b) of the act. This provision was a part of the Panama Canal Act which in express terms was intended to enlarge our jurisdiction rather than to restrict it. That act is addressed to the Commission, however, and not directly to the carriers. Section 6 (11) (b) applies only to the first step in the process of rate-making or rate regulation, namely, the establishment or initiation of rates. It does not limit our jurisdiction under other provisions of the Interstate Commerce Act to regulate such rates after they are once established. In this instance the rates under review were established by the carriers and they are seeking to supersede them with other rates of their own making. In my judgment we have ample authority over the rail rates under consideration.

The evidence justifies the finding in the report that the proposed rates would not be unreasonable, but I am of the opinion that they are violative of sections 2 and 3 of the act. If the suspended schedules should become effective the situation would then be that the present proportional rates would continue in effect on grain brought to Chicago by rail and by lake vessel but the higher local rates would apply on grain brought in by barge over the Illinois Waterways. In considering whether or not there is a violation of section 2, the question is whether the rail haul to which the proportional rate applies is "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions" in view of the fact that the prior hauls may be by rail, by barge on the Illinois Waterways, or by lake vessel. In other words, in arriving at conclusions concerning the claimed violation of section 2 in respect of the proportional rates, may the difference in the prior transportation be taken into consideration? The view taken in the report that it may finds support in the decision by division 3 in *Ex-River Grain from St. Louis to the South*, 203 I. C. C. 385, upon a state of facts substantially the same as here considered. *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197 (the *Import Rate case*) also lends support to this theory, but a different view was taken in subsequent decisions. *Wight* v. *United States*, 167 U. S. 512, *Interstate Commerce Commission* v. *Delaware L. & W. R. Co.*, 220 U. S. 235, *Interstate Commerce Commission* v. *Baltimore & O. R. Co.*, 225 U. S. 326, *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57, *Atchison, T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. Likewise, in *Chattanooga Packet Co.* v. *Illinois Central R. Co.*, 33 I. C. C. 384, it was held that the application of local rail rates north of the Ohio River on traffic moving by complainant's steam-

boat line south of the river, and of lower proportional rail rates when the movement south of the river was by rail, was violative of section 2. This decision was followed by division 4 in *Raw Sugar, New Orleans to Gramercy and Reserve, La.*, 206 I. C. C. 231. See also *Restriction of Proportional Rates on Cotton*, 161 I. C. C. 113, *Ex-River Grain and Grain Products to Mississippi Valley*, 177 I. C. C. 206, *Inland Navigation Co. v. Wabash Ry. Co.*, 43 I. C. C. 588. It will be seen therefore that the great weight of the precedents is contrary to the viewpoint of the report on the application of section 2.

The premises considered, we should require the cancelation of the suspended schedules.

APPENDIX I

Grain receipts at Chicago[1]

Mode of in-bound transportation	Corn	Wheat	Oats	Soybeans
Year 1932	*Bushels*	*Bushels*	*Bushels*	*Bushels*
Lake		192,000		
Illinois Waterways				
Rail	70,760,000	13,689,000	28,222,000	
Truck	132,000	17,000	24,000	
Year 1933				
Lake				
Illinois Waterways		3,209,000		
Rail	28,000	99,000		
Truck	91,432,000	10,037,000	20,941,000	
	1,409,000	98,000	220,000	
Year 1934				
Lake				
Illinois Waterways		1,231,000	2,536,000	
Rail	173,000	981,000		
Truck	54,206,000	21,437,000	11,787,000	
	1,121,000	134,000	80,000	
Year 1935				
Lake				
Illinois Waterways	3,623,000	3,911,000	719,000	
Rail	727,000	961,000	170,000	
Truck	27,841,000	16,727,000	16,591,000	6,449,000
	783,000	902,000	185,000	1,000
Year 1936				
Lake				
Illinois Waterways	767,000	2,876,000		
Rail	1,299,000	437,000	37,000	28,000
Truck	57,208,000	19,808,000	21,819,000	8,772,000
	1,369,000	301,000	135,000	47,000
Year 1937				
Lake				
Illinois Waterways	118,730,000	963,000	140,000	
Rail	2,019,000	2,113,000	396,000	97,000
Truck	45,811,000	34,777,000	23,903,000	8,099,000
	177,000	253,000	25,000	12,000
Year 1938				
Lake				
Illinois Waterways	92,000	699,000		
Rail	10,270,000	7,57,000	995,000	355,000
Truck	122,878,000	28,102,000	24,014,000	10,633,000
	2,027,000	481,000	65,000	181,000
Year 1939				
Lake				
Illinois Waterways		211,000		
Rail	13,206,000	1,977,000	837,000	1,076,000
Truck	65,771,000	24,142,000	20,987,000	18,486,000
	5,005,000	470,000	122,000	336,000

[1] Figures furnished by the Chicago Board of Trade.

[2] Includes 14,883,000 bushels from Argentina, 3,236,000 bushels from South Africa, 198,000 bushels from Yugoslavia, and 64,000 bushels from Hungary, total 18,443,000 bushels.

Grain (also flour) out of Chicago

Mode of transportation	Corn	Wheat	Oats	Flour	Soybeans
Year 1932	*Bushels*	*Bushels*	*Bushels*	*Barrels*	*Bushels*
Lake	40,626,000	5,908,000	16,107,000	1,274,000	
Rail	6,981,000	11,317,000	8,647,000	3,918,000	
Year 1933					
Lake	37,279,000	6,959,000	6,779,000	1,100,000	
Rail	14,493,000	9,323,000	10,798,000	4,348,000	
Year 1934					
Lake	23,947,000	11,749,000	1,849,000	1,075,000	
Illinois Waterways			12,000		
Rail	15,380,000	6,262,000	11,528,000	4,958,000	
In store and afloat:					
At first of year	21,087,000	4,427,000	4,098,000		
At end of year	10,382,000	5,802,000	3,155,000		
City consumption and unaccounted for	26,878,000	4,394,000	1,937,000		
Year 1935					
Lake	516,000	5,481,000	615,000	1,208,000	1,558,000
Illinois Waterways		25,000	111,000		
Rail	14,359,000	9,014,000	10,835,000	5,330,000	421,000
In store and afloat:					
At first of year	10,382,000	5,802,000	3,155,000		
At end of year	2,417,000	9,122,000	6,257,000		
City consumption and unaccounted for	26,060,000	3,861,000	3,001,000		
Year 1936					
Lake	9,549,000	9,071,000	824,000	1,515,000	1,921,000
Illinois Waterways		145,000			
Rail	15,784,000	11,566,000	17,091,000	5,911,000	2,347,000
In store and afloat:					
At first of year	2,417,000	9,122,000	6,257,000		
At end of year	4,479,000	7,483,000	8,155,000		
City consumption and unaccounted for	33,108,000	4,359,000	2,174,000		
Year 1937					
Lake	7,079,000	19,254,000	4,803,000	718,000	1,282,000
Illinois Waterways	125,000		40,000		
Rail	22,823,000	12,735,000	22,221,000	5,871,000	2,520,000
In store and afloat:					
At first of year	4,479,000	7,483,000	8,155,000		
At end of year	7,427,000	11,196,000	3,134,000		
City consumption and unaccounted for	23,754,000	2,414,000	2,402,000		
Year 1938					
Lake	81,121,000	12,654,000	1,491,000	1,883,000	2,305,000
Illinois Waterways		30,000			
Rail	17,459,000	12,480,000	21,178,000	5,168,000	2,956,000
In store and afloat:					
At first of year	7,427,000	11,196,000	3,134,000		
At end of year	14,541,000	10,138,000	2,857,000		
City consumption and unaccounted for	30,107,000	5,867,000	2,152,000		
Year 1939					
Lake	72,535,000	9,487,000	449,000	2,031,000	10,467,000
Illinois Waterways					
Rail	21,604,000	13,908,000	30,314,000	5,217,000	2,917,000
In store and afloat:					
At first of year	14,541,000	10,138,000	2,857,000		
At end of year	13,017,000	7,035,000	1,702,000		
City consumption and unaccounted for	30,710,000	6,478,000	2,538,000		

APPENDIX II

Rules affecting the application of proportional rates applying on grain, grain products, and grain byproducts, in carloads (using Chicago, Ill., as a representative reshipping point), to destinations in central territory and western termini points (including eastern trunk-line arbitrary points)[1]

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this note rates will apply as follows:

Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence, as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Northwest Territory (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

GRAIN (NORTHWEST)

Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 71), originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

GRAIN PRODUCTS AND FLOUR (NORTHWEST)

[This rule provides for the milling or malting in transit; also the milling, malting, mixing or reconsignment in transit, and specifies the points at which these services are to be performed.]

GRAIN PRODUCTS NAMED IN NOTE 10 BEARING REFERENCE * (STAR) (NORTHWEST) ALSO BY-PRODUCTS OF GRAIN (NORTHWEST)

Rates on Grain Products and By-Products of Grain, subject to this Note, will apply on Grain Products in Note 10, pages 72 and 73, bearing reference * (star)

[1] These rules (or notes) are taken from Agent B. T. Jones' tariff I. C. C. 3300, effective June 30, 1939, and supplement 7 thereto, effective October 15, 1939.

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and on By-Products of Grain (see Note 15, page 74), carloads, originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory, as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Note 40 in the suspended schedules was modified to read:

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail[1] transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory:

Points in Wisconsin.

Points in Upper Peninsula of Michigan.

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78 of tariff as amended.

Points in Dominion of Canada, viz: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrive by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal-River-Canal or Canal-River traffic, arriving via Illinois waterways, viz., Rivers, Canals and connecting waterways). These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail lines from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

NOTE 45. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transport

[1] Application via water transportation eliminated; except as otherwise provided in this Note, rates (not reshipping or proportional), will apply.

tion line (except Illinois Grain moving via water transportation line) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will ONLY APPLY on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A 1. Rates on Grain (see Note 5, page 71), from Chicago, Ill., * * * subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

A 2. Rates on Grain Products (see Note 10, pages 72 and 73) from Chicago, * * subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

* * * * * * *

Note 45 in the suspended schedules reads substantially as above, except that the second paragraph begins with the words "Except as otherwise provided in tariffs as amended," and the words "or water," in the third line, and the parenthetical phrase beginning in the third line and ending in the fourth line, reading "(except Illinois Grain moving via water transportation line)" have been eliminated, and a new paragraph has been added, reading:

"These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co. Tariff No. 41 O, I. C. C. No. 66, and Spring Lake Packet Co., Tariff No. 41 N, I. C. C. No. 70, supplements thereto or successive issues thereof."

APPENDIX III

Rules affecting the application of proportional rates applying on grain, grain products, and byproducts of grain, in carloads, using Chicago, Ill., as a representative reshipping point) to destinations in trunk-line and New England territories, and other eastern points, including certain points in eastern Canada[1]

NOTE 20. APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which joint through commodity rates are in effect in connection with the in-bound

[1] These rules (or notes) are taken from supplement 58, Agent B. T. Jones' tariff, I. C. C. 5955, effective June 30, 1939, and supplement 67 thereto, effective October 15, 1939 246 I. C. C.

carrier via the re-shipping point from original shipping point to final destination, provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom. * * *

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

The Ex Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, * * * via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * * * * *

Note 20 in the suspended schedule reads:

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

(a) Traffic reaching the re-shipping point via a rail †† transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. * * *

(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill. * * * (Will not apply on Ex River, Canal, River-Canal or Canal-River traffic arriving via Illinois waterways, viz: Rivers, Canals and connecting waterways except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31 J. I. C. C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * * * * *

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†† Application via water transportation † eliminated; except as provided in this Note rate (not re-shipping or proportional) published in tariff as amended, will apply.

† Increase.

APPENDIX IV

Copy of an in-bound freight bill covering a shipment moved by barge to Chicago

Transit No. 379108
Bureau

JOHN I. HAY COMPANY

37 W. Van Buren St., Chicago, Ill.

F. B. No. 1222
Trip No. CC-49

To: Continental Grain Co
332 So. La Salle St.,
Chicago, Illinois

Invoice Date — October 26, 1939
Tow Boat — Whiteman
Barges — 102
Shipping Date — October 25, 1939
Shipping Point — La Salle, Ill.

Freight from La Salle to Chicago, Ill., viz: 44804.16 bu. @ $0.015 per bushel $672.06

2,688,940 pounds unloaded at R. I. Term Elev. 10/28/39

Paid 10/30/39
JOHN I. HAY CO.

Copy of shipper's certificate, used to engage application of proportional rates

Transit shipping direction

Penna. RR.
2 Cars of Bulk Corn.
Order, Continental Grain Co.,
Baltimore, Md.
Notify: Continental Grain Co.,
New York, N. Y.

Forward via * * *

Transit House: R. I. Terminal Elev.
Out Bound Reference:

Car Number	Initial	Weight
50671	G. N.	120,000 * * *
7095290	STP	93,000 * * *

Date Loaded: 10/30/39

Board of Trade Weight

(Rate shown hereon to be applied only when authorized by the Central Inspection and Weighing Bureau)

Inbound reference

Transit record No.	Origin point	Date	Billed from	Road	Date	Waybill No.	Commodity	Weight applied	Rates Thru	Rates Paid in Bal. out
379106	La Salle, Ill	10/25/39	Hay			Barge #102	Corn	120,000		16
Do	do	do	do			do	do	93,000		16

B. L. Clerk please sign Continental Grain Co. in Section 7. Shipment authorized as indicated hereon Central Inspection & Weighing Bureau

SHIPPER'S CERTIFICATE

This is to certify that the Billing listed under inbound is applicable to the commodity forwarded as provided in C. F. A. R. R., Tariff No. 413 K, I. C. C. No. 3204.

CONTINENTAL GRAIN COMPANY.
Signature of shipper

Copy of an inbound freight bill covering a shipment moved by barge to Chicago

Transit No. 392790
Bureau

THE ALLIED BARGE CORPORATION
829 N. Libert St., Morris, Ill.

11 29 39
Freight Bill No. 271

Lowell Hoit & Company
So. Chicago, Ill.

Route Via: Meckling Barge Tow
Mary Ellen

Morris, Ill., 11 25 39 WB No. 419 Coop Allied Grain Dealers Corporation, Barge No. 745

Oats, 19,271.08 bu., 0.014	$269.79
Beans, 8,674.20 bu., 0.0175	140.25
	410.04

Unloaded: 616,680 Oats Irondale Elev. 11 27
480,960 Beans Norris Elev. 11 29

1,097,640 pounds.

Paid 11 30 39 per W. H. Allen.

2961 C. C.

Copy of shipper's certificate, used to engage application of proportional rates

Transit Shipping Direction
N. Y. C. (and others)
11 cars of Oats
Order: Norris Grain Company, and various other parties destined to various points in Ohio, Ky., N. Y., Va., and Md.
Notify: Various parties. Usually at same destination.

Forward via * * *

Transit House: Norris Elev.
Out-bound reference
Car Number: Various
Initial: Various
Weight: Various
Board of Trade Weight

Date Loaded: 1/5/40 and later dates

[Rate shown herein to be applied only when authorized by the Central Inspection and Weighing Bureau]

In bound reference

Transit record No.	Origin point	Date	Billed from	Road	Date	Waybill No.	Commodity	Weight applied	Rates Thru	Rates Paid in Bal. out
392780	Morris, Ill	11 25 39				Barge #745	Oats	13,190		17.5
Do	do	do				do	do	64,000		16.5
Do	do	do				do	do	64,000		25
Do	do	do				do	do	64,000		25
Do	do	do				do	do	80,000		16.5
Do	do	do				do	do	60,800		16.5
Do	do	do				do	do	60,800		16.5
Do	do	do				do	do	76,800		23
Do	do	do				do	do	64,000		16.5
Do	do	do				do	do	5,080		23
Do	do	do				do	do	64,000		16.5

SHIPPER'S CERTIFICATE

This is to certify that the tonnage listed under in-bound is applicable to the commodity forwarded as provided in JONES R. R., Tariff No. 413 K. I. C. C. No. 3204

NORRIS GRAIN COMPANY.
(Signature of shipper.)

The respective destinations of the out bound shipments, in the order above set forth, were Lexington, Ky., Bellevue, Ohio, Albany, N. Y., Albany, N. Y., Bellevue, Ohio, Bellevue, Ohio, Bellevue, Ohio, Front Royal, Va., Bellevue, Ohio, Baltimore, Md., and Bellevue, Ohio. The out bound reference also shows the car initial and number in which the out bound shipment was made, and in addition to the weight applied shown above, the total weight of the shipment. For oats the total disposition amounted to 616,080 pounds, leaving a balance on hand (out of the total of 1,007,080 pounds of Oats) of 391,000 pounds. The oat tonnage in barge 745 was transferred to the account of the Archer Daniels Midland Co. [illegible] Central Inspection & Weighing Bureau.

Copy of an in-bound freight bill covering a shipment moved by barge to Chicago

Transit No. 392626
Bureau

A. L. Mechling Barge Line
Sheffield, Illinois

Nov. 29, 1939

Norris Grain Company, Chicago, Illinois.

Chillicothe, Ill., 11/27/39, Norris Grain Co., Barge No. 7.
Corn, 680,000 Prepaid.
Unload 11-28 Norris Elevator.
236 I. C. C.

Copy of shipper's certificate, used to engage application of proportional rates

Transit shipping direction
8 Cars of Corn

B. & O. and others

Forward via * * *

Transit House
Norris Elev

Date Loaded
12-27-29-39

Order Norris Grain Co., and various other parties.
Notify Vario parties

Out-bound reference
Car Number
Various

Initial
Various

Weight
Various
Board of Trade Weight

(Rate shown herein to be applied only when authorized by the Central Inspection and Weighing Bureau)

In bound reference

Transit receipt No.	origin point	Date	Billed from	Road	Date	Westbill No.	Commodity	Weight applied	Rates		
									Thru	Paid in	Out Rate
392526	Chillicothe, Ill	11-27-39				Barge 67	Corn	11,620			5
Do	do	do				do	do	100,000			15
Do	do	do				do	do	96,000			15
Do	do	do				do	do	100,000			15
Do	do	do				do	do	100,000			15
Do	do	do				do	do	100,000			15
Do	do	do				do	do	88,000			15
Do	do	do				do	do	94,980			
Total disposition								690,600			

SHIPPER'S CERTIFICATE

This is to certify that the tonnage listed under is loaded as applicable to the commodity forwarded as provided in JONES R. R., Tariff I. C. C. No. 413 K, I. C. C. No. 3201 as to destinations other than Paris, Ill., as to which reference is made to WTL R. R., Tariff No. 331 E, I. C. C. No. A 3102, or WTL R. R. Tariff No. 339 E, I. C. C. No. 3073.

NORRIS GRAIN COMPANY
(Signature of Shipper.)

All of the shipments listed above were consigned to Toledo, Ohio, except the first, which was consigned to North Troy, Vt., and the last two, which were consigned to Paris, Ill. The out-bound reference also shows the car initial and number in which the out-bound shipment was made, and in addition to the weight applied, shown above, the total weight of the out-bound shipment. The transit shipping directions also bear stamp reading "Shipment authorized as inspected General Inspection & Weighing Bureau."

Copy of lake grain bill of lading covering a shipment of grain transported by lake steamer to Chicago

AMERICAN FORM 1936 LAKE GRAIN BILL OF LADING

Transit Bureau
253116
Record No

DULUTH, MINN., *August 29, 1938*

Shipped in apparent good order and condition by Occident Terminal Div. of Russel Miller Milling Company as agents and forwarders, for account and risk of whom it may concern, on board the Steamer Maritana, whereof ... is master, now in the port of Duluth-Superior and bound for So. Chicago, Ill.

* * * * * * *

Order of Electric Steel Elevator Division of Russell Miller Milling Co.
Care of Agent, Irondale Elevator, South Chicago, Illinois.
Notify Norris Grain Company, South Chicago, Illinois.

*

[Copy—not negotiable]

Consisting of One hundred forty-four thousand (144,000) bushels of No. 1 Rye
Payable by.....
Freight from Duluth Superior to South Chicago, Ill. Being shipper at ... cents
Duluth ...
per bushel of Fifty-six pounds.
Grain loaded All over.
Unloaded Irondale Elev. 8/25/38.

143,708.32 Bus.
8,047,680 pounds
By ALASTAIR GUTHRIE, *Agent*
246 I. C. C.

Representative copy of a shipper's certificate which was used to engage the application of proportional rates

Transit Shipping Direction
Wabash (and others)
Order Norris Grain Company
Toledo Ohio
Notify Norris Grain Company
Same

Forward via * * *

Transit House
Irondale

Date Loaded
11 30

Board of Trade Weight

[Rate shown hereon to be applied only when authorized by the Central Inspection and Weighing Bureau]

In-bound reference								Out-bound reference			
Transit record No.	Origin	Date	Billed from	Road	Waybill No.	Weight applied	In rate paid	Out rate	Car No.	Initial	Weight
255116	Duluth, Minn	8-20-38			Steamer Maritana	61600		16	142558	RI	61600
Do	do	do			do	61600		16	140124	RI	61600

SHIPPER'S CERTIFICATE

This is to certify that the tonnage listed under inbound is applicable to the commodity forwarded as provided in JONES R. R. Tariff No. 413 I. I. C. C. No. 3060

NORRIS GRAIN COMPANY.
(Signature of shipper.)

77 shipper's certificates, in the above form, were executed covering 7,522,240 pounds of the tonnage unloaded at the Irondale Elevator from the steamer *Maritana*. The out-bound tonnage from Chicago was loaded into 100 separate cars, which were consigned to various points in the States of Indiana, Ohio, Kentucky, Virginia, Maryland, Pennsylvania, New Jersey, and Massachusetts, and the "Out Rates" shown on these certificates ranged from 14 to 28 cents. The "In Rate-Paid" under "Transit Record No. 255116" was never shown, but in a few instances only a part of the out-bound tonnage from Chicago consisted of tonnage moving into Chicago on the steamer *Maritana*, the balance of the tonnage moving into Chicago by rail. In such instances the rate into Chicago by rail was always shown. Transit shipping directions also have stamp reading: "Shipment authorized as indicated hereon Central Inspection & Weighing Bureau."

APPENDIX V

Transit rules published in Agent B. T. Jones' tariff I. C. C. No. 320.

RULE 7. TO WHOM AND WHEN GRANTED

Transit privilege will only be accorded shippers, transit house owners or operators who comply with these rules, keep records in the manner prescribed in Rules 11 * * * and make statements, when requested, as to tonnage and representative freight bills on hand, and make affidavit, when required, as to the accuracy of such records and statements, and permit inspection thereof, at any time, by the Central Inspection and Weighing Bureau.

Transit privileges will only be accorded when tariff under which transit rate is applied permits application of transit privileges on commodities moving under such tariff.

* * * * * * *

RULE 11. RECORDS

Transit house records must show all commodities handled, point of origin and destination, and whether received or forwarded by rail, boat, wagon or otherwise, which records must clearly show the different commodities, in pounds, separately:

(a) Received by rail.

(b) Received by boat.

(c) Received by wagon.

(d) Transferred from one transit house to another. (Specify transit house.) * * *

(e) Forwarded by rail (local or nontransit).

(f) Forwarded by boat (local or nontransit).

(g) Disposed of locally.

(h) Forwarded by rail (transit).

(i) Forwarded by boat (transit).

(j) On hand.

(k) Commodities subjected to treatment and change in weight due to such treatment. * * *

RULE 15. INBOUND CHARGES

Shipments delivered to transit houses will be subject to full tariff rates of inbound carriers based on actual weights subject to tariff minima.

RULE 19. RECORDING FREIGHT BILLS

Inbound carrier's paid freight bills or boat manifests, with duplicate, covering shipments subject to these rules shall be recorded with the Central Inspection and Weighing Bureau. * * *

RULE 39. ACCESS TO TRANSIT HOUSES

The Central Inspection and Weighing Bureau shall have access at all times to transit houses and records to check up the commodities therein and the freight bills therefor, and it shall be its duty to:

(a) Cancel freight bills for like commodities in excess of the commodities in the house.

(b) Keep a book record of all inbound freight bills and boat manifests * * *

* * * * * * *

(d) It shall also be the duty of the Central Inspection and Weighing Bureau to insert on the shipping directions and the original and duplicate inbound freight bills, the through rate, division, proportional or reshipping rate (as the case may be), properly applicable. * * *

RULE 61. RATES

The through rate to be applied shall be the lawfully published rate through from the original point of shipment to final destination in effect via the transit point at the time of initial shipment from the origin applicable to the commodity covered by inbound billing which these rules permit to be matched against outbound shipments. (See Rules 11 * * *.)

2361 C. C.

GOVERNMENT PRINTING OFFICE 1947

APPENDIX B.

Report of Division 2 of the Interstate Commerce Commission in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory, reported at page 353 in Volume 246 of the Interstate Commerce Commission reports.

Appendix II and Appendix III to the Report of Division 2 in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-barge to Official Territory, 246 I. C. C. 353, as found at pages 385 to 388, inclusive, thereof.

APPENDIX II

Rules affecting the application of proportional rates applying on grain, grain products, and grain by-products, in carloads (using Chicago, Ill., as a representative reshipping point), to destinations in central territory and western termini points (including eastern trunk-line arbitrary points)[1]

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this note rates will apply as follows:

Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence, as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Northwest Territory (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

[1] These rules (or notes) are taken from Agent B. T. Jones' tariff I. C. C. 3300, effective June 30, 1939, and supplement 7 thereto, effective October 15, 1939.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

GRAIN (NORTHWEST)

Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 71), originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

GRAIN PRODUCTS AND FLOUR (NORTHWEST)

[This rule provides for the milling or malting in transit; also the milling, malting, mixing or reconsignment in transit, and specifies the points at which these services are to be performed.]

GRAIN PRODUCTS NAMED IN NOTE 10 BEARING REFERENCE* (STAR) (NORTHWEST) ALSO BY-PRODUCTS OF GRAIN (NORTHWEST)

Rates on Grain Products and By-Products of Grain, subject to this Note, will apply on Grain Products in Note 10, pages 72 and 73, bearing reference *(star) and on By-Products of Grain (see Note 15, page 74), carloads, originating in the following described territory.

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory, as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Note 40 in the suspended schedules was modified to read:

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail[1] transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described

[1] Application via water transportation eliminated; except as otherwise provided in this Note, rates (not reshipping or proportional), will apply.

below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory:

Points in Wisconsin.

Points in Upper Peninsula of Michigan.

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78 of tariff as amended.

Points in Dominion of Canada, viz.: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrive by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz., Rivers, Canals and connecting waterways). These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail lines from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

NOTE 45. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (except Illinois Grain moving via water transportation line) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will ONLY APPLY on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A-1. Rates on Grain (see Note 5, page 71), from Chicago, Ill., * * * subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 46, page 83).

A-2. Rates on Grain Products (see Note 10, pages 72 and 73) from Chicago, * * * subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

* * * * *

Note 45 in the suspended schedules reads substantially as above, except that the second paragraph begins with the words "Except as otherwise provided in tariff, as amended," and the words "or water," in the third line, and the parenthetical phrase beginning in the third line and ending in the fourth line, reading "(except Illinois Grain moving via water transportation line)" have been eliminated, and a new paragraph has been added, reading:

"These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co., Tariff No. 41-O, I. C. C. No. 66, and Spring Lake Packet Co., Tariff No. 41-N, I. C. C. No. 59, supplements thereto or successive issues thereof."

APPENDIX III.

Rules affecting the application of proportional rates applying on grain, grain products, and byproducts of grain, in carloads, (using Chicago, Ill., as a representative reshipping point) to destinations in trunk-line and New England territories, and other eastern points, including certain points in eastern Canada [1]

NOTE 29. APPLICATION OF RE-SHIPPING OF PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

* * *

[1] These rules (or notes) are taken from supplement 58, Agent B. T. Jones' tariff, I. C. C. No. 3055, effective June 30, 1939, and supplement 67 thereto, effective October 15, 1939.

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, * * * via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * *

Note 20 in the suspended schedule reads:

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

(a) Traffic reaching the re-shipping point via a rail †† transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-

†† Application via water transportation † eliminated; except as provided in this Note, rates (not re-shipping or proportional) published in tariff as amended, will apply.

† Increase.

bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. * * *

(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., * * * (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz: Rivers, Canals and connecting waterways, except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J. I. C. C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

APPENDIX C.

BEFORE THE

Interstate Commerce Commission

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY.	I. & S. Docket No. 4718

PETITION OF INLAND WATERWAYS CORPORATION OPERATING THE FEDERAL BARGE LINES, FOR REHEARING AND RECONSIDERATION OF THE REPORT HEREIN.

Now comes the Inland Waterways Corporation, operating Federal Barge Lines, and petitions for consideration of the report of Division 2 herein, dated July 31, 1941, and for a rehearing herein, and in support of this petition respectfully states:

Division 2, by its aforesaid report, fixes its stamp of approval upon a proposal of eastern rail lines to restrict the application of their established proportional rates on grain and grain products, so as to prevent the application of said proportionals on shipments which arrive at Chicago via barge lines operating on the Illinois waterways, while continuing their application on shipments arriving at Chicago via rail lines from the same

points, or via lake cargo vessels. Using New York as a representative destination, the effect of the proposal will be to apply a proportional rate of 26 cents for the rail haul east of Chicago on shipments arriving at Chicago via rail carrier or lake cargo carrier, while discontinuing its application on shipments transported to Chicago by common carriers on the Illinois River. On shipments transported by such carriers the respondents propose to apply a rate of 34.5 cents for the future.

The proposed schedules are directly contrary to and prohibited by Section 3, paragraph (4) of the Interstate Commerce Act, as recently amended by the Transportation Act of 1940. That section expressly prohibits any discrimination by a carrier between its connecting lines. Federal Barge Lines, as a common carrier by water subject to Part III of the Interstate Commerce Act, is such a connecting carrier, and is directly discriminated against in the proposed schedule; it protests against this discrimination, and urges that Division 2 erred in failing to require the cancellation of this unlawful proposal.

ARGUMENT IN SUPPORT OF PETITION.

This petition deals solely with the section of the Act above referred to, and it is the contention of Federal Barge Lines that this new provision of the law has the effect of directly invalidating the very schedules which are here under suspension. In addition, we believe that Division 2 erred in its report in several other respects, notably in its interpretation of the present tariffs, and in its decision as to the issues under Sections 1, 2, and paragraph 1 of Section 3. These matters are, we believe, urged in the petitions of other parties for reconsideration herein. Whatever conclusion the Commission may reach as to those other matters, it can not affect the right of this carrier to non-discriminatory treatment by its connecting rail lines, respondents herein. The proposed schedules are unlawful, if for no other reason, simply because they provide for discrimination in rates between Federal Barge Lines, on the one hand, and rail lines or lake cargo vessels, on the other.

Recent Amendments to the Law Require Cancellation of the Suspended Schedules.

Paragraph (4) of Section 3 of the Interstate Commerce Act, as amended by the Transportation Act of 1940, provides as follows (emphasis supplied):

> "(4) *All carriers subject to the provisions of this part* shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and *shall not discriminate in their rates, fares, and charges between connecting lines*, or unduly prejudice any connecting line in the distribution of traffic that is

not specifically routed by the shipper. As used in this paragraph the term *'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to part III.''*

By this section the Congress has extended to include common carriers by water subject to Part III the same protection against discrimination by connecting rail carriers as was formerly provided in paragraph (3) of Section 3 as between connecting rail lines. Having ordained a new order by bringing common carriers by water within the regulatory powers of this Commission, the Congress thus imposed upon the rail carriers a new duty to refrain from discriminating in their rates between connecting water lines, or between connecting rail and water lines, as well as between connecting rail lines. At the same time and consistent with the whole spirit of this new program to dignify water transportation for its new role as a "regulated" carrier, Congress likewise amended paragraph (4) of Section 1 of the Act so as to require common carriers by railroad "to establish reasonable through routes with common carriers by water subject to Part III".

To complete the picture, Section 305(d) of the Interstate Commerce Act, as amended, was enacted to impose upon common carriers by water the same duty with respect to discrimination between connecting common carriers by railroad, as is imposed on the rail carriers in Section 3 (4). This section is in exactly the same terms as is Section 3 (4), and the result is to require both common carriers by water and common carriers by railroad for the future to accord equal treatment to all their connecting lines, of whatever character. Historical differences are to be forgotten, and it matters not under the terms of the statute whether in the past discrimina-

tions between connecting lines have been one sided or which type of transportation has, in this respect, held the upper hand; for the future, each mode of transportation named in these sections must treat connecting lines via the other mode of transportation exactly as it treats its kindred connecting lines.

The power of the Interstate Commerce Commission with respect to enforcement of the duty imposed by the foregoing section is plenary. And because the schedules under suspension herein are opposed to the sections cited, and represent a refusal of the rail lines to perform the duty imposed upon them thereby, those schedules can and must be condemned and ordered canceled herein. Further, the Commission's power in this case is supplemented by the provisions of Section 6 (11) (b), so that the Commission may in this proceeding not only require the cancellation of the objectionable schedules under Section 3 (4), but may also require the maintenance of the present, voluntarily established, rates as reasonable proportionals for application to ex-water traffic under Section 6 (11) (b). Theoretically, the Commission is not limited to a choice between the unlawful proposed rates and the present rates, but may, upon an adequate record, prescribe some different basis of rates for the future. Actually, no different proposal has been put forward, nor has evidence been introduced which could support a different basis of rates than those presently in effect. That fact, however, cannot possibly militate to justify the proposed rates, but could only compel the postponement of any change in the present tariffs pending further hearing, and the introduction of a lawful proposal.

All that Division 2 has to say in commenting upon Section 6 (11) (b) (sheets 10, 28-9) boils down to the observation that the Commission's power under this

section is limited to the prescription of proportionals for traffic brought to the reshipping point by a common carrier by water and that the present record does not contain sufficient evidence to warrant the prescription of any different basis than that proposed. Yet this protestant, Federal Barge Lines, is such common carrier and does participate in the traffic. And, as stated, the lack of any different proposal than the unlawful one under suspension cannot affect the Commission's power to condemn that proposal or its authority under Section 6 (11) (b) to require the maintenance of the present proportionals.

FEDERAL BARGE LINES IS A CONNECTING LINE OF RESPONDENTS WHO PROPOSE UNLAWFULLY TO DISCRIMINATE AGAINST IT.

Division 2 in its report devotes some four sheets to a discussion of the status of other barge lines than Federal. We believe that the conclusions of the Division thereon are erroneous, but whether or not other barge lines, parties hereto, may be held to be common carriers subject to the Act, there can be no question but that Federal Barge Lines is such a common carrier. This is conceded by respondents, and is recognized by Division 2 on sheet 10. Moreover, while considerable mention is made in the report of Division 2 of "unpublished barge charges" and "unregulated barge charges" which "may be changed with or without any notice", the fact is that this protestant, Federal Barge Lines, is a common carrier subject to Part III, that its rates are now published in appropriate tariffs filed with this Commission (Federal Barge Lines Tariff No. 12-E, I. C. C. No. 198), and that such rates can and will be changed only according to the provisions of the law. Consequently, it cannot be disputed that Federal Barge Lines occupies the status of a connecting line to the respondent car-

riers, and is entitled to the protection afforded by Section 3 (4).

Division 2 observes the common carrier status of Federal Barge Lines on sheet 10, though the Division apparently waives aside any further consideration with the added comment "but this line has hauled little if any grain to Chicago from origins on the Illinois waterways here considered." While the importance of this observation is left wholly to inference, it should be noted to avoid any possible misconception, first, that the right of Federal Barge Lines to non-discriminatory treatment by its connecting rail lines, is in no wise dependent upon the presence or amount of traffic handled by it in the past. Secondly, Division 2 does not state all the facts which have a bearing upon this matter, regardless of its lack of importance. As was stated in the proposed report of Examiner Taylor herein, but omitted from the report of Division 2, Exhibit 63 shows that tonnages handled to Chicago by the Federal Barge Lines have aggregated as follows: 1933, 4,657 tons; 1934, 45,772 tons; 1935, 32,367 tons; 1936, 35,220 tons; 1937, 52,900 tons; 1938, 5,843 tons; and 1939, 43,292 tons. The 1939 tonnage consisted entirely of wheat from East St. Louis and Campville, Illinois, and from Kansas City, Missouri. The discrimination against Federal Barge Lines as a connecting carrier which is inherent in the proposed schedules has exactly the same importance with respect to grain originating at those points, that it has as to grain originating at Illinois River origins or elsewhere. Federal Barge Lines is discriminated against in the matter of the rates applying east of Chicago, regardless of where the traffic originates.

Further, even though the amount or origin of the traffic presently handled by Federal Barge Lines can have no bearing or effect upon its right to non-discrim-

inatory treatment by connecting lines, it is pertinent, in view of the above noted observation of Division 2, to set forth herein the tonnages for the year 1940 and the first seven months of 1941. These tonnages are shown below in the table, as taken from the records of Federal Barge Lines. This information is not, of course, in the present record but is data which may and will be introduced if and when a further hearing herein be had.

GRAIN TONNAGE HANDLED BY FEDERAL BARGE LINES TO CHICAGO IN 1940 and 1st SEVEN MONTHS 1941

	E. St. Louis, Kansas City, Mo-Kan.	Havana Ill.	Montezuma Ill.	Kampsville Ill.	Naples Ill.	Total
Wheat	60,835 tons	3,489		1,084	1,059	66,467
Corn		1,901	1,041			2,042

Since Federal does unquestionably enjoy the status of a connecting common carrier by water, it is clearly entitled to the protection of Section 3(4). The meaning of that section is abundantly plain from a reading of the quoted language of the statute. It requires no interpretation and its effect to prohibit tariffs of the kind herein proposed is plain. In the early case of *The N. Y. & N. Ry. Co. v. The N. Y. & N. E. R. R. Co.*, 4 I. C. C. 702, Chairman Cooley discussed the old Section 3(3) in a case involving a complaint against discriminations between connecting rail lines, and, after dwelling upon the language of the section at length, stated at page 720:

> "When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monop-

> oly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment."

With these words there can be no reasonable disagreement, and impartial judgment admits of no other conclusion than that the amended statute now requires that no railroad shall make any difference or distinction in rates that will coerce the public to employ a connecting rail line rather than a connecting barge line. Yet, that is precisely what is proposed in the suspended schedules. The schedules provide for the application of reasonable proportional rates on grain, when that grain is brought to the reshipping point by a connecting rail line, and expressly prohibits their application when the grain is brought thereto via the Illinois waterways. Indeed, the eastern lines who are respondents here, frankly announce that the purpose of the proposed schedules is to discourage and make unattractive the use of barge facilities on the Illinois River. The extent and importance of the discrimination complained of is demonstrated by the following table, which compares the rates which, under the proposed schedules, will be applied to shipments which arrive at Chicago via the favored rail or lake carriers with the rates which will be demanded if the shipment is brought to Chicago by Federal Barge Lines.

PROPOSED RATES ON GRAIN FROM CHICAGO TO TRUNK LINE AND NEW ENGLAND TERRITORIES DEPENDENT UPON INBOUND CARRIER.

To	If arrived at Chicago via rail or lake carrier	If arrived at Chicago via Federal Barge Line
NEW ENGLAND TERRITORY		
Boston, Mass. (Domestic)	28.0	36.5
Boston, Mass. (Export)	17.5	26.0
Portland, Me. (Domestic)	28.0	36.5
Portland, Me. (Export)	17.5	26.0
TRUNK LINE TERRITORY		
Philadelphia, Pa. (Domestic)	24.0	32.5
Philadelphia, Pa. (Export)	16.5	25.0
New York, N. Y. (Domestic)	26.0	34.5
New York, N. Y. (Export)	17.5	26.0
VIRGINIA CITIES TERRITORY		
Baltimore, Md. (Domestic)	23.0	31.5
Baltimore, Md. (Export)	16.0	24.5
Norfolk, Va. (Domestic)	23.0	31.5
Norfolk, Va. (Export)	16.0	24.5

Throughout its report Division 2 erroneously treats the proposed schedules as canceling the application of the proportional rates on traffic arriving at the reshipping point by barge on "rates not subject to the Interstate Commerce Act" (Sheet 2). As a matter of fact, the proposed schedules say nothing about application to traffic which moves to the reshipping point under rates not on file with the Commission; instead they are by affirmative terms initially restricted to traffic arriving at the reshipping point via rail. In addition, the proposed notes make the proposed rates applicable on ex-lake shipments (which, incidentally, move on rates not filed with the Commission) and for good measure pro-

vide further that the rates will not apply on "ex-river, canal, river-canal, or canal-river traffic, arriving via Illinois waterways", with the single exception that the rates will apply on shipments arriving at Chicago from Kansas City under rates specified in a particular Federal Barge Line tariff filed with the Commission. At the time of the hearing it happened coincidentally that none of the excluded traffic moved on rates filed with the Commission. But it never was true even by coincidence that the proposed rates were to apply only where the inbound haul is under rates filed with the Commission. Furthermore, since the grain rates of the Federal Barge Lines have been filed with the Commission the proposed schedules do not even make application of the proportional rates in all cases where the traffic does move up to the reshipping points on rates filed with the Commission. It is beyond cavil that the discrimination contained in the proposed tariffs actually points at a particular group of connecting carriers, of which the Federal Barge Lines is one.

In *Chattanooga Packet Co. v. I. C. R. R. Co.*, 33 I. C. C. 384, 391, the provisions contained in paragraph (3) of Section 3 prior to the amendment were referred to, and Commissioner Meyer, speaking for the entire Commission without a dissent, said (page 391):

> "By the provisions of section 3 carriers are prohibited from charging more for traffic between the same points routed over one connecting carrier than for that routed over another, unless the service which they perform is different in the one case than in the other."

There is no claim here of a different service on ex-barge than on ex-rail or ex-lake grain. In fact the contrary is expressly conceded. (Tannehill, 106)

THE DECISION HEREIN MUST CONFORM TO THE LAW AT THE TIME THE DECISION IS MADE.

As already indicated, the amendment to the law upon which this carrier rests its claim for non-discriminatory treatment by connecting lines was enacted subsequent to the hearing herein. Prior to this amendment, it is true, the Commission had construed paragraph (3) of Section 3 as affording no protection to a carrier not subject to Part I of the Act, as to the particular traffic claimed to be the subject of a discriminatory rate. *Nicholson Universal S. S. Co. v. Pennsylvania R. Co.*, 203 I. C. C. 637. While all this is obviously changed by the amended Section 3(4), strangely enough, this decision is cited in the current report of Division 2 herein (sheet 16) in support of the statement that "Section 3 of the Act is not applicable to carriers that do not come within our jurisdiction". Apparently, the Division treats the statute as if it had not been amended, and in addition, ignores the fact, which it elsewhere states in its report, that at least this carrier is subject to the Commission's jurisdiction. In any event, this statement is wholly in apposite, and the Commission must, in deciding this case, apply the law as it exists today since the whole proceeding looks to the future, and we are concerned here with the lawfulness of a proposal which fixes the rates to be charged in the future.

It could hardly be seriously contended that the proposed rates should be permitted to take effect despite the provisions of Section 3 (4) simply because that section was enacted after the filing of these rates and after the hearing herein. Such a contention, if made, is effectively answered by the decision of this Commission in *I. & S. Docket No. 4150, Cancellation of Rates and Routes Via Short Lines*, 245 I. C. C. 183, 187. In that

case the respondent carriers proposed to cancel their joint through rates with certain short lines and the Commission noted on page 186 of its report that respondents contended that the amendments to paragraphs (3) and (4) of Section 15 were not applicable because all of the proceedings took place prior to the date on which the amendments became effective. Replying to this contention, the Commission held on page 187:

> "We are of the opinion that application of this provision to pending actions should not be regarded as of a retrospective character. In any event the amendment is remedial, and we think its application to these proceedings is proper."

Incidentally, in the cited case the Commission had postponed the argument and inquired of the parties whether they desired further hearing in view of the amendments. The response was in the negative. Similar action might still be taken in this case, if any further evidence might be desirable because of the amendments here relied upon. As such a further hearing, the only evidence which could have any likely bearing upon these issues happens to be evidence of facts of which the Commission is entitled to take official notice. For example, so far as this record discloses, the rates of the Federal Barge Lines are not on file with the Commission, and evidence as to the filing of those rates might conceivably be received at a further hearing. Yet a further hearing for the purpose of receiving evidence as to facts which appear from the Commission's own files seems distinctly unnecessary. Moreover, the report of Division 2 seems to recognize (sheet 33) that Federal Barge Lines' rates are filed with the Commission.

The proposed schedules have not been justified.

The suspended tariffs are clearly unlawful, if for no other reason, because they are in violation of Section 3(4). While this matter was urged by Federal Barge Lines in their exceptions to the proposed report of the examiner, and on oral argument, respondents make no effort to justify their proposal under this section, nor would it be possible for them to do so. Yet Division 2 fails in its report even to mention that section of the Act and neither touched upon nor considered the matters urged herein. All that Division 2 has to say with respect to the contentions of the Federal Barge Lines may be found at sheets 15 to 17, and on sheets 38 and 39 of the report, where those contentions are treated as if they involved only violations of Sections 1, 2, and 3 (1) of the Act. It is true that discrimination by rail carriers against the traffic of any other carrier is not unlawful so far as Section 3 (1) is concerned, since that paragraph contains a specific proviso to that effect. But as we have already seen, paragraph (4) of that same Section 3 does specifically prohibit discrimination in rates by a carrier between connecting lines, whether the connecting lines be rail or water carriers, or both. The complaint under paragraph (1) of Section 3 is not the complaint which we here urge, but relates to preference and prejudice between localities, shippers, and various descriptions of traffic. That complaint is advanced by the Chicago protestants and not by the Federal Barge Lines. The further statement of Division 2 (sheet 16) that "Section 3 of the Act is not applicable to carriers that do not come within our jurisdiction" can have no bearing upon the position of this protestant since it is a carrier subject to the jurisdiction of the Commission under Part III of the Inter-

state Commerce Act. The purpose of that statement in the Division's report, as already noted, is wholly inexplicable.

In disposing of the Section 2 issue, which Division 2 likewise attributes to this protestant, but which is primarily an issue raised and pressed by shipper protestants, the Division cites an authority which is wholly beside the point here made, and which has no bearing upon the right of this protestant as a connecting line. That case, *Ex-River Grain from St. Louis to the South*, 203 I. C. C. 385, held (Division 3) that the service in the transportation of ex-rail and ex-water traffic is not under substantially similar circumstances and conditions and that, so far as Section 2 is concerned, proportional rate factors may differ with differences in the character of transportation to the point from which the proportional factors apply.

Accepting all that was said in that decision as law, it still remains that such differences in the character of transportation up to the reshipping point cannot conceivably furnish a justification for discrimination under paragraph (4) of Section 3. On the contrary, it is the express and direct purpose of that section, as amended, to wipe out all discrimination based upon differences in the character of the transportation up to the point of connection between carriers. That section forbids any carrier to discriminate between connecting lines, and defines connecting lines as any carrier subject to the provisions of Part I or any common carrier by water subject to Part III.

Apparently, Division 2 erroneously considered the proposed tariffs to be justified because simply "clarifying" the present tariffs without making any change. It devoted the greater part of its report to a discussion of

the various tariff notes and concluded that the present tariffs do not permit the application of the proportionals to ex-barge shipments. However, this question of interpretation of the present tariff notes can have no bearing or effect whatever upon the right of this protestant to relief from discriminatory treatment as compared with other connecting lines. The discrimination is present no matter how the tariffs are interpreted. Assuming, for example, that Division 2 correctly decided that the present tariffs do not legally provide for the application of the proportional rates on ex-barge grain, then all that is said as to the impropriety of applying those rates on ex-barge grain under the present tariffs applies with equal force to ex-lake grain. The present note 40 contains no different provisions as to ex-lake grain than is published as to ex-barge grain.

Consequently, even if we adopt as our own the view of Division 2 on the tariff interpretation question, the proposed tariffs then will be found to have the effect of *establishing* proportional rates for application on shipments brought up to the reshipping point by one class of carriers, *i. e.*, the lake cargo carriers, while at the same time refusing to provide similar, non-discriminatory rates for application on shipments which arrive at the reshipping points via Federal Barge Lines, or other barge carriers on the Illinois waterways. This is no different in principle from the discrimination which results if the present tariffs are interpreted as both shippers and carriers have historically regarded them, *i. e.*, as making the proportional rates applicable on both ex-barge and ex-lake shipments. In that case, discrimination comes about through the *exclusion* in the proposed notes of the barge carriers for the future, while the lake carriers continue to be included. It is simply a matter of the difference between taking away from one carrier

what has always been provided for all carriers, or establishing for one carrier a practice which is not established for another carrier. There is discrimination and that discrimination is brought about by the proposed schedules.

The only other matter mentioned by Division 2, which deserves comment in connection with paragraph four of Section 3, is the observation (sheet 17) that Federal Barge Lines "has no common arrangement with respondents for a through route, nor has a formal arrangement been entered into with them in connection with filed or unfiled barge rates." Curiously, the Division goes on to say that the suspended schedules would not of themselves constitute such an arrangement, although in other sections of the report the Division apparently regards the existence of such a common arrangement as a prerequisite to the proper application of proportionals on ex-barge grain. The answer, of course, is that the existence or non-existence of a common arrangement has no bearing upon our complaint, which is against the very failure of the rail lines to apply nondiscriminatory rates regardless of the character or identity of their connecting carrier. A common arrangement or a through route is a two-sided affair and Federal Barge Lines by the maintenance of its own rates, and by its position herein, fully performs its side of the obligation and fulfills its statutory duty to treat all connecting carriers alike. We complain that the rail lines, by their proposed schedules, refuse to perform their equally solemn duty.

Conclusion.

Petitioner has recently been informally advised that the eastern railway lines contemplate further amendments to their proposed tariffs so as to provide for the application of the proportionals on shipments transported up to the reshipping point by petitioner, Federal Barge Lines. While such action, if taken, would constitute a recognition of the soundness of our position herein and a fulfillment of the duty of the rail carriers, which they have heretofore refused to perform, we submit that, notwithstanding such action, the order herein should be modified so as expressly to condemn and prohibit the kind of discrimination complained of and which is inherent in the proposed tariffs as they now stand.

WHEREFORE petitioner prays that the above entitled case be reconsidered; that a reargument be granted therein, and that, if the record be deemed inadequate fully to inform the Commission of the facts which are pertinent to the issues herein, a rehearing be granted, and that the Commission enter such further order or orders in the premises as to it may seem reasonable and just.

INLAND WATERWAYS CORPORATION
Operating Federal Barge Lines
By JNO. F. GIRAULT,
Its General Traffic Manager.
ROBERT N. BURCHMORE,
Its Attorney.

WALTER, BURCHMORE & BELNAP,
Of Counsel.
2106 Field Bldg.,
Chicago, Illinois.

August 26, 1941.

CERTIFICATE OF SERVICE.

I hereby certify that I have this day served the foregoing document upon all parties of record in the above entitled proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Chicago, Illinois, this 26th day of August, 1941.

ROBERT N. BURCHMORE,
Counsel.

APPENDIX D.

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 4718
GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

DECIDED DECEMBER 1, 1941

1. Proposed restriction of reshipping or proportional rail rates on grain and grain products, in carloads, from Chicago, Ill., and other grain rate-break points to eastern destinations, so they will not apply on ex-barge (Illinois Waterways) traffic shown to be just and reasonable and not shown to be otherwise unlawful.

2. Such rates on the ex-barge traffic found legally applicable in the past where the policing provisions of the governing tariffs were strictly complied with.

3. Findings in prior report, 246 I. C. C. 353, clarified and modified accordingly.

Appearances noted in prior report.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

By schedules filed to become effective October 15, 1939, respondent rail carriers in official territory propose to restrict their reshipping or proportional rates on grain and grain products, in carloads, from Chicago, Ill., and other related grain rate-break points, to eastern destinations so they will not apply on ex-barge (Illinois Waterways) traffic. Upon protest of numerous interests the schedules were suspended, hearing was held, the matter was made the subject of a proposed report by the examiner, exceptions and replies to exceptions and oral argument before division 2. In the prior report, 246 I. C. C. 353, the division found that the application of such rates on the ex-barge traffic was without tariff authority and that the proposed schedules merely clarified this situation and were not shown to be unlawful. An order was entered vacating the order of suspension and discontinuing the proceeding.

Petitions for reconsideration addressed to all of the division's findings have been filed by certain protestants, as follows: (1) The so-called Chicago protestants operating elevators and dealing in grain at Chicago, (2) Illinois Agricultural Association, representing shippers located on the Illinois Waterways, (3) Finnegan Warehouse Company, operating an elevator on the Waterways, (4) Inland Waterways Corporation, operating the Federal Barge Lines, and (5) United States Department of Agriculture.

The Montana Flour Mills Company, which operates a mill at Cleveland, Ohio, and ships grain from Kansas City by barge to Chicago, thence by rail, but did not appear at the hearing,

has filed a petition for "leave to intervene," accompanied by a similar petition for reconsideration, addressed to all of the division's findings. However, as it does not give any explanation whatever as to why it did not appear at the hearing, its petitions must be, and are hereby, rejected under Rule II of our Rules of Practice, and will not be further considered. Petitions for reconsideration addressed solely to the division's finding under section 6 of the act were filed by respondents and intervener Chicago Board of Trade. Respondents filed a reply to protestants' petitions,[1] and the intervening western rail carriers filed a reply to all of the petitions. Thereupon the effective date of the vacating order was postponed until the further order of the Commission. The only protestant seeking a further hearing is the Federal Barge Lines, which points out that since the hearing it and certain other barge lines have filed their port-to-port grain rates with us, but this is a fact of which we can take official notice. Certain of the parties ask for reargument. Under the circumstances, we think that no useful purpose would be served by further hearing or reargument and that the matter can properly be disposed of in this report with a view to determining what, if any, modification or clarification of the division's findings should be made on reconsideration of the record in the light of the petitions and replies and our prior decisions.

At the time of the hearing, the barge lines were not subject to our jurisdiction and of course had no rates on file with us. The present tariffs naming the pro

[1] The western carriers urge that the division's findings are correct under section 6 as well as under sections 1, 2 and 3 of the act.

portional rates carry a so-called limitation rule, whereby they "are applicable only when the entire movement is performed by rail carriers or water-and-rail carriers under rates lawfully on file with us" except that such rule does not affect rates "published carrying provision that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic." They also carry a provision that they will apply on grain reaching "the shipping point via a rail *or water* transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and the rate paid to the reshipping point." To trunk-line territory, they specifically apply to ex-lake grain. To central territory, there are three sets of proportional rates, designated, respectively, as "trans-Mississippi", "Northwest", and "reshipping (Illinois)", the "Northwest" proportionals specifically applying on "shipments which arrive by boat lines at Chicago." The Northwest proportionals are in certain instances higher, and in certain instances lower, than the Illinois proportionals. The rate tariffs are made subject to the transit rules and regulations published in tariffs lawfully on file with us, including the policing rules and a so-called fourth-section rule providing that "in no case shall the combination rate to and from the reshipping point be less than the local rate from the reshipping point." In the proposed schedules, the words "or water" and the provision as to boat lines are omitted, and the rates are made applicable to ex-lake traffic to both central and trunk-line territories.

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The division found that there was and is no common arrangement between the barge lines and respondents for through routes on this traffic, that the ex-

barge traffic cannot comply with the transit rules where the rates for the inbound water haul are not on file with us, and that the maintenance of barge-rail combination rates so much lower than the all-rail rates, particularly where the inbound water haul is so short, results in a breaking down of the all-rail grain rate structure from adjacent origins in Illinois and Indiana. It construed the words "or water" in the present tariffs as referring only to water carriers having rates on file with us. It held that under the circumstances the application outbound of any rate other than the local rate was and is illegal under section 6, that the proposed schedules are not unlawful under section 1, and that the circumstances and conditions surrounding the inbound and combination movement of the ex-barge traffic are so different from those surrounding the inbound and through movement of the ex-rail and ex-lake traffic as not to constitute a violation of sections 2 and 3 of the act.

As to section 6, the division in effect held that a proportional rate by a carrier subject to the act is never legal under section 6 unless the other factor of the through rate is lawfully on file with us under paragraph 7 of that section or applies by common carrier by water under paragraph 11(b) thereof. As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act. Under the circumstances, we think that the division's finding under section 6 is not warranted as applied to shipments of this ex-barge grain where the policing provisions were strictly complied with, namely, adequate proof was furnished of the identity of the in-

bound water carrier, the origin of the traffic, and the inbound rate paid thereon.

To Chicago, the inbound barge rates range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles, as contrasted with the inbound interstate rail rates ranging from 9.5 to 13 cents. Rates are stated in cents per 100 pounds. The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.

To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Cleveland, Ohio, the barge-rail combinations will be 1.75, 4.75, and 0.75 cents, respectively, lower than the all-rail rates.

To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion

of the haul is but 0.6 per cent. To this territory, the barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict

conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the inbound barge rate of 2.75 cents plus the outbound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5-cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents), or one cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination from Morris to New York will be 37.25 cents (2.75 cents inbound plus 34.5 cents outbound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates. The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul,

and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively.

Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound

and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local

rates or joint barge-and-rail rates lower than the combinations.

The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

(1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.

(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered.

COMMISSIONER LEE concurs in the result.

EASTMAN, *Chairman*, dissenting in part:

For many years the respondent railroads have applied eastbound from Chicago what they termed "reshipping or proportional rates," which were lower than the corresponding local rates, on grain and grain products brought to Chicago by rail or by water. Similar rates were applied under like conditions from certain related points, but Chicago is the point of predominant importance. These reshipping rates were applied from

the beginning on grain brought to Chicago by lake vessel and, after the opening of the Illinois Waterways, they were applied on grain brought in by waterway barge. In the suspended schedules it is proposed to eliminate their application to this barged grain.

Division 2 concluded "that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," and found "that the schedules under suspension are not shown to be unlawful." The conclusion as to the applicability of the rates in the past met with vehement protests from all parties to the proceeding including respondents, except the intervening western railroads, and it is now reversed, almost without discussion.

I agree with this reversal, but believe that in view of the elaborate discussion of this matter by division 2, the reasons why its conclusion was unsound should be pointed out clearly and explicitly.

After citing *Kansas City Transp. Bureau* v. *Atchison, T. & S. F. Ry. Co.*, 16 I. C. C. 195, 201, to the effect that a "proportional rate means a part of or a remainder of the through rate or it means nothing at all," and *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 69 I. C. C. 185, 188, to the effect that it is well settled that reshipping and proportional rates "are inseparably connected with and form parts of the rates applying to through transportation," division 2 relied primarily on the following from *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, 575:

> We have found that a proportional rate is one which applies to a part of a through transportation

which is entirely within the jurisdiction of the Interstate Commerce Act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. (Emphasis supplied.)

The division went on to say that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common carriers by water. It is elemental that a proportional factor is but a part of a through rate. It follows that the proportional rate and the rate with which it is combined to make a through rate must be on file with us."

Singularly enough, after concluding from this reasoning that the "proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," the division found that the "schedules under suspension are not shown to be unlawful." Yet, as stated in the present report, the reshipping or proportional rates are by those schedules "made applicable to ex-lake traffic to both central and trunk-line territories," and it is conceded that the rates charged by the lake carriers are not on file with us or within the jurisdiction of the act and that these lake carriers are not common carriers. The same reasoning which led the division to conclude that the reshipping or proportional rates had never been legally applicable on the ex-barge grain would clearly require a similar conclusion as to the ex-lake grain; but this fact was ignored.

It was not ignored by respondents, and hence their protests against the decision. They saw in it, and correctly, the enunciation of a principle which would condemn, not only the application of the reshipping or proportional rates in issue on ex-lake grain, but also the many other rates of like characteristics which have for

years been published to apply to rail transportation to or from inland or coastwise ports on traffic carried from or brought to the port by unregulated contract or private water carriers. They cited the numerous cases in which we have over many years prescribed or approved such rates, which we have sometimes termed rates "in the nature of proportional rates" and which are known variously as ex-lake, ex-river, ex-ocean, lake cargo, reshipping, transshipment, import, and export rates. As is stated in the present report, in considering the principle enunciated by division 2:

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> As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act.

This is, indeed, the sole reason given for finding that the conclusion of division 2 upon this matter of rate applicability was "not warranted." Obviously the fact thus stated does not in itself prove that the principle is wrong. The matter, therefore, plainly calls for further consideration.

As shown above, division 2 relied primarily on the statement in *Chicago and Wisconsin Points Proportional Rates, supra*. (I dissented from that decision) that we "have found that a proportional rate is one which applies to a part of a through transportation *which is entirely within the jurisdiction of the Interstate Commerce Act*," qualifying this statement, however, by another to the effect that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common car-

riers by water." No citation followed the statement quoted from the *Chicago and Wisconsin case*, and I have been able to locate no case where such finding was made. *Conference Ruling 301(b)* did define a proportional rate in this manner, but our conference rulings were long since rescinded as unreliable. Furthermore, I call attention to the paragraph which followed the statement quoted:

> These proposed rates derive no validity from such analogy as they may be thought to bear to proportional rates by rail to and from the ports which differ from the corresponding local rates and which apply on traffic brought to or carried from the ports by common carriers by water, or to so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to contract carriers by water. In section 6(13)(c) of part I of the act the publication of proportional rates by rail to or from the ports which differ from the corresponding local rates, and which apply on traffic that has been brought to the port or is carried from the port by a common carrier by water, is specifically authorized. Part II of the act contains no similar authorization, either express or implied, for the publication of proportional rates, such as these, in connection with the truckload rates of common or contract carriers subject to part II or the carload rates of common carriers by railroad subject to part I. All the carriers, including respondents, which would participate in the through transportation contemplated by respondents' tariffs are subject to either part I or part II of the act and are therefore amenable to the provisions of those parts governing the publication of rates and to regulations which we have promulgated thereunder. Consequently, the reports, including the report in ***Tariffs Embracing Motortruck or Wagon Transfer Service***, 91 I. C. C. 539, cited by respondents, in which we have recognized the legality of so-called

proportional rates or rates in the nature of proportional rates published by certain

rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water, are not in point. Where, as here, both the carriers into and out of the reforwarding points are subject to the Interstate Commerce Act, we have in no case given our approval to proportional rates lower than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of shipment from primary origins to ultimate destinations.

It will be noted that in this paragraph it is made clear that "we have recognized the legality of so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water," and one of these cases is cited. In that case, as it happens, a dissenting opinion relied on *Conference Ruling 304(b)*. The case, therefore, definitely overruled that conference ruling. The paragraph cites section 6(13)(c) [now 6(11)(b)] as justification for these cases, without explaining how this could be so in view of its limitation to traffic brought to or carried from the port by a common carrier by water. Finally the paragraph, in effect, limits the previous statement "that a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the Interstate Commerce Act" to situations where "both the carriers into and out of the reforwarding points" are subject to the act, which is not the situation here under consideration.

As often happens, confusion has been caused by definitions. The act contains no definition of a "proportional" rate except that which is found in section 6(11)(b), which was originally enacted in the Panama Canal Act of 1912 and reads as follows:

> By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

Yet proportional rates which do not conform to this definition have from the very beginning been published by the railroads and been recognized as lawful and prescribed by us. It is clear that the definition was for the particular purposes of the Panama Canal Act paragraph in which it is found and which authorizes us to prescribe "proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier." The history of the Panama Canal Act makes it evident that this provision was motivated by a fear that the Commission might not prescribe such rates in the absence of definite prompting by Congress.

In our decisions, also, references will be found to "true proportional" rates as distinguished from those which are "in the nature of proportional rates." The carriers have often conformed to such a distinction by using, where the through transportation is subject only in part to our jurisdiction, some

other designation than "proportional", such as "reshipping", "transshipment", "ex-lake", "ex-river", etc. But this is a matter of no importance except to those who are concerned with precise terminology.

There is nothing in the act which makes a "true proportional" rate lawful or which makes a proportional rate unlawful if it is not of this Simon pure variety. The real question is whether rates, by whatever names they may be called, are lawful which are lower than the corresponding local rates and which are confined in their application to traffic that has had a prior or will have a subsequent movement to or from a point beyond.

One answer to this question, and the one given in all of the petitions, is that the Commission has in many past cases, and consistently, approved and even prescribed rates of this character, and has done so, not only where the prior or subsequent movement was subject to its jurisdiction, but also where it was not, including many situations where the prior or subsequent movement was by contract or private carriers. This is a persuasive answer, but I think it is well to go further and show that these past decisions are sound.

The significant and questionable thing about proportional rates or rates of like nature is that they are normally less than the corresponding local rates. Manifestly this fact does not in itself make them unreasonable under section 1. Whether it makes them unjustly discriminatory under section 2 is a more difficult question. For convenience I quote that section:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges,

demands, collects, or receives from any other person or persons for doing for him or them *a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. (Emphasis supplied.)

As between local rates and lower proportional rates between the same points, the essential questions under section 2 are whether they apply to like kinds of traffic and whether the transportation is under substantially similar circumstances and conditions. Sometimes a dissimilarity in the immediate circumstances and conditions of transportation can be shown, as in the case of the lake-cargo coal rates, where the concentration of deliveries at a very few points makes the service cheaper than that rendered under the local rates, which permit deliveries at many points over a wide terminal area. In other cases, however, as in the present proceeding, no dissimilarity of this character can be shown.

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In a very early case, *New York Board of Trade and Transp.* v. *Pennsylvania R. Co.*, 4 I. C. C. 447, the Commission found it unlawful, under section 2, for railroads to charge less on import traffic from ports to inland destinations than on like domestic traffic from and to the same points. There was no evidence of any difference in the costs of service. The decision was reversed by *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, on the principal ground that the circumstances and conditions, more particularly the commercial and competitive conditions, surrounding the two forms of traffic were dissimilar. Later

decisions of the Supreme Court, however, indicate that the "circumstances and conditions" to which section 2 refers are those which are incident to the transportation service rendered and not those which are extraneous thereto, and that the "exigencies of competition," in particular, do not justify discrimination. *Wight* v. *United States*, 167 U. S. 512; *Interstate Commerce Commission* v. *D., L. & W. R. R. Co.*, 220 U. S. 235; *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U. S. 325; *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57; and *A., T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. A recent decision of the court, *United States* v. *Trucking Co.*, 310 U. S. 344, 352-3, has this interesting pronouncement:

> The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when "undue", "unjust", "unfair", and "unreasonable." And the courts have always recognized that Congress intended to commit to the Commission the determination by application of an informed judgment to existing facts, of the existence of forbidden preferences, advantages and discrimination.

In a footnote to which reference is made in the last quoted sentence, the court refers to the *Texas & Pacific case*, above cited, as an "apparent exception, at an early date before the function of the Commission had become fully outlined against the background of time and the empiric pattern of litigation."

Nevertheless the Commission, in the exercise of this apparently rather wide discretion, has not since the *Texas & Pacific case* found import or export rates, or other rates in the nature of proportional rates, to be in violation of section 2 because they were lower than

corresponding local rates, and in my judgment with good reason. It may be argued with considerable force that although the traffics to which the two kinds of rates apply are the same in content, the dissimilarity in their origins or destinations and in commercial and competitive conditions prevents them from being a "like kind of traffic" within the meaning of section 2. However, I think the sounder view is that there is an essential dissimilarity in attendant circumstances and conditions as between local traffic and traffic which is being transported part of the way from an origin or to a destination which lies beyond, and that this dissimilarity is not extraneous to the transportation service rendered but incident thereto, for the reasons which follow.

As railroad rates are made, by long-established custom, those for long hauls normally are relatively lower mile for mile than those for shorter hauls, and often to a greater extent than

is justified by the fact that terminal costs are a constant factor. In other words, some preference has commonly been given to the longer hauls, and this has met with rather general approval. This tendency has not been confined to situations where joint rates are in effect. It has also prevailed where the through charges have been on a combination basis and the principle could be given effect by the railroads only through the publication of proportional rates and the like. Nor has it been confined to hauls which are wholly by rail, for it has been extended also, and quite naturally, to hauls which are partly by rail and partly by some other form of transportation, and regardless of whether the latter is subject to the Interstate Commerce Act.

This thought was expressed quite definitely and explicitly in *Central Pennsylvania Coal Producers Assn.* v. *B. & O. R. Co.*, 196 I. C. C. 203, 235-6, as follows:

> Except as to traffic to nonadjacent foreign countries, the operators allege that the maintenance to the ports of Philadelphia and Baltimore of transshipment rates which are different for inside-the-capes than for outside-the-capes traffic, contravenes the provisions of section 2 of the act. As previously stated, *the rail service rendered all transshipment coal is substantially the same.* The coal, which is charged the outside-the-capes rates, other than that which is exported, usually moves to New York Harbor or to New England, and that charged the higher inside-the-capes rates generally moves a relatively short distance by water to points within the respective harbors. *Transshipment rates, like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed.* We have found on various occasions that proportional rates which vary in amounts depending on the origins or destinations are not unlawful because of that fact. *Southern Kansas Grain Asso.* v. *C. R. I. & P. Ry. Co.*, 139 I. C. C. 641. *Transshipment rates are also similar to export rates in that we have no jurisdiction over the transportation which takes place beyond the transshipment piers.* We have found that the maintenance of different export rates from the same origin to the same port, dependent upon the foreign destination, is not unlawful. *Western Export Iron and Steel Case*, 43 I. C. C. 129. In *Detroit* v. *C. & O. Ry. Co.*, 77 I. C. C. 98, division 1 found, among other things, that a rate on coal from mines in West Virginia to Toledo, for transshipment to Detroit, Mich., which was higher than on coal destined to certain west-bank Lake Michigan and Lake Superior ports, was not unjustly discriminatory. It is significant that transshipment rates to the ports of Philadelphia and Baltimore, varying according to whether the destination of the traffic was within or beyond the

capes, *have been maintained for over a quarter of a century without complaint under section 2* of the act, although they have been assailed under other sections of the act by various interests, including these complainants. The latter, in the

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Eastern Bituminous Coal case, sought outside-the-capes rates that would have widened the spread under the inside-the-capes rates that then existed and still exist. Upon the facts of record we are of the view that the transshipment rates assailed are not unjustly discriminatory. (Emphasis supplied.)

It will be noted that the railroads there maintained "transshipment" rates on coal which were in the nature of proportional rates and lower than the corresponding local rates; that there were two sets of these "transshipment" rates, one lower than the other, dependent on the ultimate destinations of the coal at the end of the water haul, although substantially the same rail service was rendered all transshipment coal; and that the transportation by water was not subject to our jurisdiction. Yet the Commission found that there was no violation of section 2, either in the fact that the transshipment rates were lower than the local rates or in the fact that one set of transshipment rates was lower than the other. The reason given was that such rates "like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed."

Stating the principle in another way, while the transportation service rendered between two points under a local rate and under a proportional or other like rate may be physically identical, yet it is not performed under circumstances and conditions which are similar in

the one case and in the other, for the transportation for which the proportional or other like rate is charged is part of a through movement from or to a point beyond, whereas the transportation for which the local rate is charged is complete in and of itself. It is quite true that in those instances where the two services are physically identical, there is no difference in cost which can justify making the proportional or other like rate lower than the local rate, except such as may possibly result from a difference in the volume of movement; but cost of service is not the only factor that may properly be given weight in the making of railroad rates, as we have often recognized. The practice of charging less for transportation which is a part of a longer through haul than for strictly local transportation between the same points has the sanction of accepted custom, and in my judgment it is the chief justification for the proportional rates or rates of like nature, lower than the corresponding local rates, which we have in so many cases approved or prescribed, although difference in cost of service has often been an additional justification.

Turning from section 2 to section 3, the same considerations apply, with the addition that the exigencies of competition may also justify differences in rates under the latter section, and, to establish violation, proof of injury from the differences is also necessary. Those who are charged the higher local rates are seldom able to furnish such proof, because of the lack of a competitive relation with those who pay the lower rates.

These are the reasons, stated explicitly and fully to the best of my ability, why I agree with the reversal of the conclusion of division 2 "that the proportional rates here in issue have never been applicable on this barge traffic moving

on unfiled rates." Lest there be misunderstanding, however, let me say that it does not follow from these reasons that a proportional rate or rate of like nature may not be unreasonable under section 1 or that it may not, under certain conditions, violate either section 2 or section 3; nor does it follow that such rates must always be established. They merely go to the point that the mere fact that such rates are lower than corresponding local rates does not in itself prove a violation of any of these sections.

The present report makes the further finding that "The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful." With this I do not agree. It is prefaced by a brief discussion which I quote here for convenience in reference. The contention that the schedules are unlawful is, according to the report, based primarily on the result that "the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same." It is said that this is "also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges." Then follows this comment:

> To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this

proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations.

To trunk-line and New England territories, the reshipping rates now apply uniformly on ex-rail and ex-water shipments, and they do not differ with the length or character of the inbound haul or with the origin territory. To central territory, there are three different sets of reshipping rates. Those designated "Trans-Mississippi" are the lowest and apply on ex-rail grain from territory of which Kansas City is representative. Those designated "Illinois Reshipping" are somewhat higher and apply on ex-rail grain from origins in Illinois. Those designated "Northwest" are uniformly 3 cents higher than the "Trans-Mississippi" rates and are generally higher than the "Illinois Reshipping" rates. They apply on ex-rail grain from territory of which Minneapolis is representative, and also on both ex-lake and ex-barge grain. After the proposed schedules take effect, the reshipping rates will cease to apply, with very minor exceptions, on all ex-barge grain, but will continue to apply, as above indicated, on all ex-rail and ex-lake grain.

The report states that the "proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the

profits of the Chicago elevator operators." I do not so understand the evidence. The table on page 361 of the prior report shows clearly that the farmers are paid the Chicago market price less the "costs incident to making delivery at Chicago," which consist mainly of

the transportation charges. It follows that the farmers whose grain can be transported by barge receive the benefit, in the prices paid for their grain, of the low barge rates, and that this benefit does not go to the Chicago elevator operator. For this reason, ex-barge grain has exactly the same value in the elevator as ex-rail or ex-lake grain, and naturally it will not be moved eastbound on local rates when ex-rail or ex-lake grain can be moved at the much lower reshipping rates.

While it is true, to some extent, that the combination of the barge rate to Chicago plus the local rate eastbound is lower than the combination of the rail rate from the same origin point to Chicago plus the reshipping rate eastbound, this fact will not enable the ex-barge grain to move from Chicago on the local rate, because the benefit of the low barge rate now goes to the farmer and cannot be used by the elevator operator to offset the higher level of the local rates as compared with the reshipping rates. In other words, the grain is brought by the Chicago operator and is shipped thereto without knowledge of where it will go after it reaches Chicago, and the through combination rates to eastern points do not enter into the transaction. This is, of course, true of practically all grain shipments to primary markets, and the through transportation which is reflected in proportional or reshipping rates therefrom is to this extent fictional; but it is no more fictional in the case of this ex-barge grain at Chicago than it is of grain which moves from the farms into the primary market of Kansas City.

As I understand it, the effect of the proposed schedules, unless the prices paid to the farmers whose grain is barged are reduced, will be to limit the outlet of the ex-barge grain to local consumption in Chicago and to

the lake and lake-rail routes to eastern points. If this outlet is sufficient, the situation will not be changed, except that the rail respondents will be deprived of the ex-barge traffic. If it is not sufficient, however, as in the winter months when the lake routes are closed, the producers of the grain which is now barged will either have to ship by rail to Chicago, with a consequent sacrifice in prices received, or sustain a similar sacrifice by accepting less from Chicago buyers for barged grain than they now receive. It is significant that a witness for respondents testified that the schedules under suspension were proposed "with the hope that we could drive this business off the water and back onto the rails where it belongs." If this hope is realized, the farmers who now ship by barge will certainly suffer in the prices paid for their grain. However, the effect of the proposed schedules is not the primary question, but whether they are in violation of the law.

In view of the long continuance of the reshipping rates and having in mind the level of the proportional rates which we have prescribed on grain in western territory, it can be urged with force that the local rates are unreasonable, under

section 1, for application on this ex-barge grain. However it is unnecessary to go into this, if, as I believe, the proposed schedules are clearly unlawful under sections 2 and 3.

Considering section 2, it is conceded that the "physical carriage beyond the reshipping point is substantially the same" on the ex-barge grain as on the ex-rail and ex-lake grain, and the traffic in all three instances is clearly "like traffic." So far as the circumstances and

conditions are concerned which relate to the haul beyond the reshipping point when considered as a part of a through haul, the reasoning of the report seems to be that, comparing the ex-barge with the ex-rail and ex-lake grain, these circumstances and conditions are dissimilar because of the differences in the "relative length and nature of the inbound and through service." Therefore it is not unlawful, under section 2, to charge more for an eastbound haul of ex-barge grain from Chicago than for an identical haul of ex-rail or ex-lake grain.

While we have found that proportional rates or rates of like nature may lawfully vary with the length and nature of the haul to or from the point beyond, it is not necessary that there be such a variance, and the fact is that ordinarily there is none. This is as true of the proportional rates which we have prescribed as of those which the carriers have voluntarily established. Here there is now no variance whatever in the reshipping rates to trunk-line and New England territories. They are the same whether the inbound haul is by rail or by water or whether it is short or long. It is now proposed to cancel the application of these rates to ex-barge traffic, even if it moves from such comparatively distant points as Kansas City and St. Louis, but to continue to apply them to ex-rail or ex-lake traffic regardless of the length and nature of the inbound haul. Clearly if the rule of variance is to be followed at all, it must be equally applied, and it cannot be invoked to defend a variation which is wholly inconsistent with the rate structure as a whole.

When it comes to the reshipping rates to central territory, there is a variation which is now dependent partly on the general origin territory in which the grain

originates and partly on whether it moves by rail or by water. To all ex-water traffic, however, reshipping rates now apply which are as high as any of the lot, except to a relatively few points in central territory, to which somewhat higher reshipping rates apply on grain originating in Illinois and moved by rail to Chicago. The "Northwest" rates, which are the ones which apply on the ex-water traffic, are uniformly 3 cents higher than the "Trans-Mississippi" rates, and they average higher than the "Illinois Reshipping" rates. They apply to the ex-lake traffic whether it originates at Duluth or at some relatively nearby port on Lake Michigan, and they apply on the ex-barge traffic whether it originates at Kansas City or at some point quite near to Chicago on the Illinois Waterway. Much the same is true of the reshipping rates which apply on the ex-rail grain. It could be argued with force that the present rate situation is unjustly discriminatory as respects the ex-barge grain, for if it originates at Kansas City or St. Louis, it is charged reshipping rates which are 3 cents higher than those which apply on ex-rail grain from the same points, and if it originates

in Illinois, it is charged reshipping rates which average materially higher than those which apply on ex-rail grain from the same points or points in the same general territory. Certainly there can be no defense, based on the length and nature of the inbound haul or any other circumstance, for depriving the ex-barge grain entirely of the benefits of the reshipping rates while permitting such rates, of the same or a lower level, to apply on ex-rail and ex-lake grain whatever the point of origin or length of the inbound haul.

Clearly this is a case where it is proposed to charge

persons shipping ex-barge grain a greater compensation than is charged other persons shipping ex-rail or ex-lake grain for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," and clearly, also, this would result in a violation of section 2.

The same facts which spell a violation of section 2, if the proposed schedules become effective, likewise spell a violation of section 3, when coupled with the positive evidence that these schedules will result in injury to the producers of ex-barge grain, at least during the season when transportation by lake from Chicago is not available. In this connection it was pointed out in the prior report that under section 3(1), as amended by the Transportation Act of 1940, "undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful." The undue prejudice with which I am concerned, however, is not to the operators of the barge lines but to the shippers of the grain.

I realize that under the doctrine enunciated by the Supreme Court in its recent decision in *United States v. Trucking Co., supra*, any decision which the Commission reaches in its wisdom with respect to a violation of section 2 or section 3 is likely to be sustained, if questioned in court. That, however, is an additional reason for great care in arriving at our decision.

Question has been as to whether the failure to apply reshipping rates to grain which has been trucked into Chicago results in violation of sections 2 and 3. This question is not here in issue. My tentative opinion upon it is that where the movement by truck is from territory from which grain can be moved by rail or by water

to Chicago subject to the application of the reshipping rates eastbound, the failure to apply such rates to the grain brought in by truck does result in violation of sections 2 and 3, provided adequate provisions for the identification and policing of such shipments are practicable and enforceable. The prior report reflected doubt as to whether such provisions are practicable with respect to the ex-barge grain, but in the present report it seems to be conceded that they are practicable with respect to such grain, although they may not have been properly enforced in the past, and with this view I agree.

I. & S. Docket No. 4718—Sheet 17.

ALLDREDGE, *Commissioner*, dissenting:

The issues in this proceeding were defined by the suspension order. This order brought in question the lawfulness of the suspended schedules. It did not, of course, present any issue concerning the lawfulness of respondents' rates or practices in the present or past. The section 6 finding in the prior report, therefore, was not in response to any issue presented, was in disregard of the rights of all of the parties to a hearing, and was, therefore, clearly improper. Of course, I have no objection to the present report to the extent that the finding is rescinded, but generally I disagree for reasons stated in my dissenting expression in the prior report.

I am authorized to state that Commissioners PORTER and JOHNSON join in this expression.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of December, A. D. 1941

Investigation and Suspension Docket No. 4718

Grain Proportionals Ex-Barge to Official Territory

It appearing, That on July 31, 1941, division 2 made and filed its report and order in the above-entitled proceeding, and that subsequently certain petitions for reconsideration and replies to said petitions, enumerated in the report of the Commission of this date, were filed;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed its report on reconsideration of the record in the light of said petitions and replies and our prior decisions, in which report the findings of division 2 are modified and clarified in certain respects, and which report, together with said report of division 2, are hereby referred to and made parts hereof:

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of the schedules enumerated and described in said order, be, and it is hereby, vacated and set aside as of December 22, 1941, and that this proceeding be discontinued.

By the Commission.

(Seal)

W. P. BARTEL,
Secretary.

[fol. 128] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

AMENDED COMPLAINT—Filed January 16, 1942

Plaintiff for its amended complaint served pursuant to an order of this Court, entered January 16, 1942, alleges:

1. Paragraphs 1 to 3, inclusive, and paragraphs 5 to 21, inclusive, together with all appendices, are adopted and incorporated herein by reference from plaintiff's complaint;

2. In place of paragraph 4 in plaintiff's complaint, plaintiff alleges that defendant, Erie Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the state of New York; its principal office and place of business is at Cleveland, in the state of Ohio; it is the successor by consolidation to the properties of the Chicago & Erie Railroad Company; it operates lines of railroad for the carriage of freight throughout the states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, and other states in the United States.

Wherefore, plaintiff prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order until the final determination of this cause and that [fols. 129-130] upon final hearing a decree be entered enjoining said carrier defendants from making effective said change in tariffs unless and until approved as lawful by a lawful order of the Commission; and

(c) That plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Nuel D. Belnap, Walter, Burchmore & Belnap, Attorneys for Plaintiff.

Robert N. Burchmore, Nuel D. Belnap, 2106 Field Building, Chicago, Illinois.

[fol. 131] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Answer of Interstate Commerce Commission—Filed January 23, 1942

Now comes the Interstate Commerce Commission, one of the defendants herein, by its counsel, and in answer to the Complaint filed in the above-entitled proceedings respectfully represents:

1. For the purposes of this suit the Commission admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the Complaint.

2. The Commission denies the allegations of paragraph 20 of the complaint except that it admits that on December 1, 1941, the Commission issued its report and order on reconsideration, said report and order being reproduced as Appendix D of the Complaint.

3. The Commission denies the allegations of the first paragraph numbered 21 of the Complaint and further denies the materiality of any of the matters therein alleged.

4. The Commission denies each and every allegation of the second of the two paragraphs of the Complaint numbered 21.

[fol. 132] 5. Further answering the allegations of the Complaint, the Commission alleges that in the proceedings in which the aforesaid reports and orders were made and entered, the parties thereto, including the plaintiff herein,

were and each of them was accorded the full hearing provided by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff by its counsel; that in briefs filed in said proceedings and in oral argument questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including questions raised by plaintiff in this suit, and the Commission determined said matters and entered and served upon plaintiff and other interested parties its reports and orders; that said reports and orders include the Commission's findings of fact, conclusions and requirements in the premises, and that upon the evidence aforesaid the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said reports support the order here in question and that said findings and conclusions were and are and each of them was and is fully supported and justified by the evidence adduced in said proceedings.

The Commission further alleges that in making said orders it considered and weighed carefully each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings and their respective counsel, including matters covered by the allegations of the Complaint herein.

[fol. 133] The Commission further alleges that said orders were not made or entered by it either arbitrarily or unjustly or contrary to the relevant evidence or without evidence to support them; that in making said orders the Commission did not exceed its authority and the Commission denies each and all the allegations to the contrary contained in said Complaint.

Except as herein expressly admitted the Commission denies each and all of the allegations contained in the Complaint insofar as they conflict with the allegations herein or with the statements, findings, determinations or conclusions of fact included in the aforesaid reports of July 31, 1941, and December 1, 1941, attached to said Complaint as Appendices B and D thereof, respectively, which said

reports together with the orders issued therewith are hereby referred to and made part of this answer.

All of which matters and things the Commission is ready to aver, maintain and prove.

Wherefore, The Complaint herein should be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fols. 134-135] *Duly sworn to by Walter M. W. Splawn. Jurat omitted in printing.*

[fol. 136] In District Court of the United States

Civil Action. No. 3725

[Title omitted]

Answer of the United States of America—Filed February 5, 1942

Comes now the United States of America, by its counsel, and for answer to the complaint herein says that the United States admits the allegations of Paragraphs 1 to 19, inclusive, and the allegation of Paragraph 20 that on December 1, 1941 the Commission issued its report and order on reconsideration which are reproduced as Appendix D of the complaint.

For Further Answer to the remaining portions of the complaint the United States makes the following statements and representations:

1. This is an action against the United States to set aside an order of the Interstate Commerce Commission instituted pursuant to the provisions of 28 U. S. C. 41 (28), 45 and 46.

2. Under the provisions of 28 U. S. C. 45 (a) the Attorney General has charge and control of the interests of the Government in this action. This section, however, does not impose upon the Attorney General the duty of defending the Commission's order in all cases, nor confer authority on him to dispose of or discontinue such an action as this over

[fol. 137] the objection of other parties; and it is expressly provided in such section that such other parties may prosecute, defend, or continue the proceeding unaffected by the action or non-action of the Attorney General herein.

3. Under the provisions of Section 201 of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1291, the Secretary of Agriculture was authorized to intervene, and did intervene, in the proceeding before the Interstate Commerce Commission; and he is further given the rights of a party before the Commission to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. Pursuant to said section and to 28 U. S. C. 45 (a), the Secretary of Agriculture has served notice of intervention as a plaintiff in this action and has applied for leave to file a complaint. As a plaintiff, the Secretary of Agriculture challenges the validity of the order of the Interstate Commerce Commission and prays that it be set aside.

4. The Interstate Commerce Commission has been joined as a party defendant, has answered the complaint by asserting the validity of its order, and will be represented at the hearing by its own attorneys.

5. For the Attorney General to defend the order of the Interstate Commerce Commission would require him to assert a position on behalf of the United States which is attacked by the head of a coordinate branch of the Executive Department of the Government, and possibly to assume, at some stage of this proceeding, the position of advocate for both sides of the controversy.

6. Under the circumstances recited, and in view of the adequate representation of the interests of the United [fol. 138] States in this case, wherever they may lie, the remaining allegations of the complaint are neither admitted nor denied.

Frank Coleman, Smith R. Brittingham, Jr., Special Assistants to the Attorney General, Counsel for the United States.

Thurman Arnold, Assistant Attorney General. J. Albert Woll, United States Attorney.

[fols. 139-141] I certify that a copy of the foregoing answer was this day mailed to the following persons:

Nuel Belnap, Esq., Walter, Burchmore and Belnap, 2106 Field Building, Chicago, Illinois, Counsel for plaintiff. Daniel H. Kunkel, Esq., Attorney, Interstate Commerce Commission, Washington, D. C., Counsel for Interstate Commerce Commission. Mastin G. White, Esq., Solicitor, U. S. Department of Agriculture, Washington, D. C., Counsel for Intervening Plaintiff, Secretary of Agriculture. Frank H. Cole, Jr., and Erich W. Lademann, Esqs., Attorneys, Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois. Leo P. Day, Esq., Attorney, New York Central Railroad Company, Chicago, Illinois. Horace L. Walker and Bryce L. Hamilton, Esqs., Attorneys, New York, Chicago and St. Louis Railroad Company, 1400 First National Bank Building, Chicago, Illinois. Theodore Schmidt and George F. Dyche, Esqs., Attorneys, Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois. Horace L. Walker and William G. Wise, Esqs., Attorneys, Chesapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois, Counsel for the Several Railroad Defendants.

Smith R. Brittingham, Jr., Special Assistant to the Attorney General.

February 2, 1942.

[fol. 142] In District Court of the United States

Civil Action File No. 3725

[Title omitted]

Answer of the Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, The Chesapeake and Ohio Railway Company—Filed January 6, 1942

Now come The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and The Chesapeake and Ohio Railway Company, by their respective attorneys, and file this their joint and several answer to the complaint herein, and say:

First Defense

The assailed order of the Interstate Commerce Commission is not the character of order which this Court is authorized to enjoin or set aside, and this Court lacks jurisdiction over the subject matter in that regard.

[fol. 143] Second Defense

This Court has no jurisdiction to enjoin these defendants, or any of them, from making effective or enforcing any change or changes in their schedules of rates for the transportation of property by rail in interstate commerce.

Third Defense

Plaintiff does not have the interest or standing requisite to enable it to bring and maintain this suit.

Fourth Defense

The complaint fails to state a claim against these defendants, or any of them, upon which relief can be granted by this Court.

Fifth Defense

1. These defendants, in answer to paragraph 1 of said complaint, deny the allegations of the last sentence therein.

2. These defendants admit the allegations of paragraphs 2, 11, 12, 13, 15, 16, 17, 18 and 19 of said complaint.

3. These defendants, in answer to paragraphs 3, 5, 6, 7, 8 and 9 of said complaint, admit that they are corporations as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

4. These defendants, in answer to paragraph 10 of said complaint, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein, except defendants admit that plain-
[fol. 144] tiff conducts interstate transportation on a port-to-port basis without any common arrangement with rail carriers beyond Chicago for through transportation.

5. These defendants, in answer to paragraph 14 of said complaint, admit that the Interstate Commerce Act was amended by the Transportation Act of 1940 as alleged therein, and further aver that plaintiff has failed to call

the Court's attention to other amendments made to the Interstate Commerce Act by the Transportation Act of 1940, among which are the amendments now appearing as Section 3, paragraph (1) and Section 303, paragraphs (b) and (c).

6. These defendants, in answer to paragraph 20 of said complaint, admit the allegations of the first two sentences therein; and deny the allegations of the last sentence therein.

7. These defendants, in answer to the first of the two paragraphs of said complaint numbered 21, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the second sentence therein; and deny all remaining allegations therein.

8. These defendants, in answer to the second of the two paragraphs of said complaint numbered 21, deny each and every allegation therein.

9. Further answering, these defendants deny each and every allegation of said complaint not herein specifically admitted or otherwise specifically answered; deny that plaintiff is entitled to the relief prayed for in said complaint, or any part thereof, or any relief whatsoever.

Wherefore, these defendants pray that they, and each of them, be dismissed as defendants in this cause, that said [fols. 145-146] complaint be dismissed, and that they have and recover their costs.

Frank H. Cole, Jr., Erich W. Lademann, Attorneys for The Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois; Horace L. Walker, Bryce L. Hamilton, Attorneys for The New York, Chicago and St. Louis Railroad Company, 1400 First National Bank Building, Chicago, Illinois; Leo P. Day, Attorney for The New York Central Railroad Company, La Salle Street Station, Chicago, Illinois; Theodore Schmidt, George F. Dyche, Attorneys for The Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois; Horace L. Walker, William G. Wise, Attorneys for The Cheapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois.

Receipt is hereby acknowledged of a copy of the foregoing answer this 6th day of January, A. D. 1942.

Robert W. Burchmne, Nuel D. Belnap, Attorneys for Plaintiff.

[fol. 147] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Petition of Intervention of the Secretary of Agriculture —Filed February 6, 1942

To the Honorable the Judges of Said Court:

The Secretary of Agriculture of the United States moves for leave to intervene as a plaintiff in this action, in order to assert the grounds of complaint set forth in his proposed complaint, a copy of which is attached, pursuant to the [fol. 148] authority contained in Section 201 of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 36; 7 U. S. C. 1940 ed. 1291), and Section 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940 ed. 45a).

Mastin G. White, Solicitor, United States Department of Agriculture, Washington, D. C.

Haskell Donoho, Of Counsel.

Certificate of Service

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 2d day of February, 1942.

Haskell Donoho, Senior Attorney, United States Department of Agriculture, Washington, D. C.

[fol. 149] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

COMPLAINT—Filed February 6, 1942

1. The Secretary of Agriculture of the United States, intervening plaintiff, adopts by reference the complaint of the original plaintiffs, Inland Waterways Corporation, with the exception of the first of the two paragraphs numbered 21 thereof, and by way of further complaint states:

[fol. 150] 2. The Secretary is a party in the case captioned Grain Proportionals, Ex-Barge to Official Territory, Investigation and Suspension Docket No. 4718, which culminated in the order of the Commission of December 1, 1941.

3. If the order of the Commission, mentioned above, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

4. If the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

5. If the order, referred to above, becomes effective, it will result in the shifting of grain from barges to the railroads during a period of national crisis when there is every reason to believe that railroad facilities will be taxed to the utmost.

6. The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

[fols. 151-152] 7. The order of the Interstate Commerce Commission, referred to above, is unlawful and void and beyond the power of the Commission to make in that the Commission erred in failing to reexamine, in the light of

the provisions of Section 303(b) of the Transportation Act of 1940, its old decisions which indicated that the Commission should not permit the use of rail proportionals and reshipping grain rates east of Chicago on water-borne shipments reaching Chicago via carriers which had not filed tariffs with the Interstate Commerce Commission or some other appropriate regulatory agency.

Wherefore, intervening plaintiff prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until the final determination of this cause, and that, upon the final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Respectfully submitted, Mastin F. White, Solicitor, United States Department of Agriculture, Washington, D. C.

By direction of the Secretary.

Haskell Donoho, Of Counsel.

[fol. 153] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Notice—Filed February 6, 1942

To: Mr. Daniel H. Kunkel, Attorney, Interstate Commerce Commission, Washington, D. C.; Mr. J. Albert Woll, U. S. District Attorney, 450 U. S. Courthouse, Chicago, Illinois; Mr. Frank H. Cole, Jr., Mr. Erich W. Lademann, Attorneys, Baltimore & Ohio R. R. Co., 315 Grand Central Station, Chicago, Illinois; Mr. Clyde E. Shorey, Attorney, Erie Railroad, 135 S. LaSalle St., (R. 2130) Chicago, Illinois; Mr. Albert B. Enoch, Ass't Gen'l Sol., C. R. I. & P. R. R. Co., 1025 LaSalle St. Station, Chicago, Illinois; Mr. Chas. B. Bowling, Chief, Transportation Division, United States Department of Agriculture, Washington, D. C.; Honorable Francis Biddle, Attorney General of the United States, Department of Justice, Washington, D. C.; Mr. Daniel W. Knowlton, Chief Counsel, Bureau of Law, Interstate Commerce Commission, Washington, D. C.; Mr. Leo P. Day, Attorney, New York Central System, 525 La Salle St. Station, Chicago, Illinois; Mr. Horace L. Walker, Mr. Bryce L. Hamilton, Attorneys for the N. Y. C. & St. L. R. R. Co., 1400 First National Bank Bldg., Chicago, Illinois; Mr. Theodore Schmidt, Mr. George F. Dyche, Attorneys for Pennsylvania R. R. Co., 652 Union Station, Chicago, Illinois; Mr. Horace L. Walker, Mr. William G. Wise, Attorneys for C. & O. Ry. Co., 69 W. Washington Street, Chicago, Illinois; Mr. Haskell Donoho, Senior Attorney, United State Department of Agriculture, Washington, D. C.; Mr. S. R. Brittingham, Jr., Special Assistant to the Attorney General of the United States, Department of Justice, Washington, D. C.; Walter Burchmore & Belnap, 2106 Field Building, Chicago, Illinois:

[fol. 154] Please Be Advised and Take Notice that the undersigned on February 6, 1942, at the opening of court in the forenoon or as soon thereafter as counsel may be heard before the judges before whom said cause is pending at the room occupied by them as a court room in the Federal Building in the City of Chicago, County of Cook, State

of Illinois, and District aforesaid, will present the hereunto attached motion for leave to intervene and become a party, at which time and place you may appear if you are so advised.

A. L. Mechling, doing business as A. L. Mechling Barge Line, by Edward B. Hayes, His Attorney.

[fol. 155] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Petition of Intervention of A. L. Mechling, Doing Business as A. L. Mechling Barge Line—Filed February 6, 1942

To the Honorable Judges of Said Court:

A. L. Mechling, doing business as A. L. Mechling Barge Line, moves for leave to intervene as a plaintiff in this action in order to assert the grounds of complaint set forth in his proposed complaint, a copy of which is attached.

A. L. Mechling, doing business as A. L. Mechling Barge Line, by Edward B. Hayes, Attorney.

Edward B. Hayes, of Counsel.

[fol. 156] Certificate of Service

I hereby certify that I this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed to each such party.

Dated at Chicago, Illinois, this 31st day of January, 1942.

Edward B. Hayes.

[fol. 157] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Complaint—Filed February 6, 1942

1. A. L. Mechling, doing business as A. L. Mechling Barge Line, adopts by reference the complaint of the original

plaintiff, Inland Waterways Corporation, and by way of further complaint says:

2. This complainant filed his petition for a hearing in the case captioned Grain Proportionals, Ex-Barge to Official Territory, Investigation and Suspension Docket No. 4718, and for rehearing of the order of the Commission of December 1, 1941, which petition was denied by the Commission by order dated January 21, 1942. True copies of complainant's said petition and of said order of the Commission denying the same are hereto attached as Appendix [fol. 158] I and Appendix II, respectively.

3. This complainant is a carrier of grain by barge to Chicago, Illinois, and other rate break points in question.

4. If the suspended schedules should become effective the situation would then be that the present proportional rates for the on-haul would continue in effect on grain brought into Chicago and other rate break points by rail and lake vessel, but the higher local rates would apply on grain brought in by barge over the Illinois Waterways.

5. Complainant's business is the bringing of grain by barge to Chicago and other rate break points in question by barge, for reshipment there to interstate and foreign destinations. That is the only authority granted him by the Commission. Reference is made to the Commission's order of November 6, 1941 (quoted at the end of Appendix I hereof).

6. The proposed schedules discriminate against the connecting line of this complainant; they were adopted for the purpose of putting this complainant and other barge carriers similarly engaged out of the business.

7. The record on the facts before the Commission was made and closed on and before January 26, 1942. At that time the Commission construed the Interstate Commerce Act to permit rail lines to discriminate against the connecting lines of unregulated water carrier such as complainant then was. After the record on the facts closed before the Commision, Congress amended the Interstate Commerce Act by the Transportation Act of 1940, effective September 18, 1940, whereby discrimination by a rail line against the connecting line of a common carrier by water subject

[fol. 159] to Part III was forbidden (Section 3(4)) and a new and mandatory National Transportation Policy was enacted (preceding Section 1). Later, and on November 6, 1941, by its said order of that date, the Commission held this complainant to be a common carrier by water subject to Part III and a certificate conforming to said order thereafter issued to and is held by this complainant.

8. This complainant could not be heard to assert his rights under the Transportation Act of 1940 when the record on the facts was made and closed before the Commission: that act had not yet been passed and those rights did no then exist. Notwithstanding complainant applied to the Commission for a hearing after his rights under that subsequent enactment were settled (and before the Commission's order of December 1, 1941, became effective) it refused to permit him to be heard. The complaint adopts by reference the averments and offers of proof made by him before the Commission in his said petition (Appendix I hereof).

9. The Commission acted arbitrarily and contrary to the Interstate Commerce Act as amended by the Transportation Act of 1940 in the respects aforesaid, and further:

(a) In assuming to sustain the proposed schedules without taking any evidence whatever either on the said question of discrimination, or the said question of violation of the new National Transportation Policy, both of which questions arose under the Transportation Act of 1940 after the record on the facts made before the Commission had been closed;

(b) In denying this complainant a hearing on the facts as to his rights under the Interstate Commerce Act as amended by the Transportation Act of 1940, and especially Section 3 (4) thereof and the National Transportation Policy preceding Section 1, both enacted since the record on the facts on which the Commission's order of December 1, 1941, was predicated had been made and closed;

[fol. 160] (c) In sustaining the proposed schedules as lawful, although before the Commission's order to that effect had been entered on December 1, 1941, the Transportation Act of 1940 had enacted said new National Trans-

portation Policy and forbidden discrimination against the connecting lines of any common carrier by water subject to Part III, and no opportunity had been afforded to any one to present evidence that the proposed schedules were in violation of the law as so amended, and complainant offered to present such evidence to the Commission and prayed for the opportunity to do so;

(d) In sustaining said proposed schedules notwithstanding they affirmatively appeared (by the undisputed evidence of the rail lines proposing them) to have been designed and proposed solely for the purpose of putting barge carriers such as this complainant out of the business, and notwithstanding the amended law at the time when the Commission ordered the approval of the proposed schedules, forbade rail lines to discriminate in their rates against carriers by water such as this complainant;

(e) In the respects heretofore specified herein and in the complaint of the original complainant.

10. In the premises this complainant has been deprived of a hearing, contrary to equity and contrary to Article V of the Amendments to the Constitution of the United States.

Wherefore, this complainant prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order until the final determination of this cause and that upon final hearing a decree be entered enjoining said carrier defendants from making effective said change in tariffs [fol. 161] unles and until approved as lawful by a lawful order of the Commission; and

(c) That the complainant have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Kremer, Branand & Hayes, Attorneys for A. L. Mechling, doing business as A. L. Mechling Barge Line.

Edward B. Hayes, 1016 Insurance Exchange Building, Chicago, Illinois.

[fol. 162] APPENDIX I TO COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

I. & S. Docket

No. 4718

PETITION AND SPECIAL APPEARANCE OF A. L. MECHLING, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF A. L. MECHLING BARGE LINE, FOR LEAVE TO INTERVENE AND FOR REHEARING AND RECONSIDERATION OF THE REPORT HEREIN

[fol. 163] Now comes A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, specially appearing, and under that special appearance for the purposes hereof only, respectfully represents and prays:

This Petitioner could not be heard when the record on the facts was made and closed herein in January, 1940, to assert his rights (and necessities) as they now exist under the subsequently enacted Transportation Act of 1940.

Petitioner is now a regulated common carrier of grain by barge to Chicago, Illinois (and other rate break points in question) for reshipment there to interstate and foreign destinations, under authority of the act mentioned, and in conformity with its provisions, with published rates for that service on file with this Commission.

After Petitioner was held to be a common carrier subject to Part III of the Interstate Commerce Act, as amended by the Transportation Act of 1940 (which occurred subsequent

to the report of Division 2 herein) Petitioner filed a petition herein, and attached as an exhibit thereto the order of Division 4 in docket No. W-630, holding him to be a common [fol. 164] carrier subject to Part III (which petition and exhibit, part of the files and records of this Commission in the proceeding, are hereby referred to and made part hereof by such reference as fully and with the same force and effect as though set out verbatim herein) and gave notice thereof on December 12, 1941.

In and by said petition, Petitioner set forth among other things (and now again sets forth) his rights under the Transportation Act of 1940 and especially: paragraph (e) of Section 5, thereof, amending paragraph 4 of Section 3 of the Interstate Commerce Act; Part III of the Interstate Commerce Act as amended by the Transportation Act of 1940; and the new "National Transportation Policy," made mandatory by the Transportation Act of 1940. And Petitioner shows that the rate proposal in question made prior to said Transportation Act of 1940, would if it ever became effective, violate his said rights—rights on which he had never been heard nor had any opportunity to be heard, inasmuch as the Transportation Act of 1940 had not been passed and those rights did not exist when the hearings herein on the facts were held and closed.

In and by his said petition, Peti-oner prayed (and now again prays) that the rate proposal in question should be held unlawful, in view of the change in the law effected by the Transportation Act of 1940, without further evidence; and furt:er, if that might not be done, Petitioner then prayed that this Commission would notice the said report and order of Division 4 holding him to be a common carrier subject to Part III of the Interstate Commerce Act, as amended after the hearings herein by the Transportation Act of 1940 (which prayer is hereby renewed); and further, if notice could not be taken of said order of Division 4, [fol. 165] then Petitioner prayed that he might offer the same in evidence herein (which offer and prayer Petitioner hereby renews); and further, if said order of Division 4 could not be noticed, or if this Commission felt that the report of Division 2 herein, approving said proposal, could not be reversed without further factual information, then that the Petitioner might have leave to be heard and present evidence in support of his rights under the Transpor-

tation Act of 1940, and to the proposition that said proposal as to him is illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940 (and that prayer is hereby renewed).

Since the report of Division 2 herein, the Commission has made a report and order herein (which, on information and belief, were not received even by those who were parties thereto until about December 15, 1941) wherein, by a majority of seven to four, the Commission approved said proposal. Said order is not effective until December 22, 1941.

Petitioner shows that said proposal, if it should become effective would take his said rights under the Interstate Commerce Act as amended by the Transportation Act of 1940, upon which he has never had opportunity to present evidence and be heard, and particularly: that whereas, prior to said Transportation Act of 1940, the Interstate Commerce Act had been construed not to forbid discrimination in a rail rate against the connecting line of an unregulated carrier (and Petitioner was an unregulated carrier prior to said Act) the amendment of Section 3 made by said act now specifically forbids discrimination against the connecting line of common carrier by water subject to Part III (created by said amending act) and Petitioner has now been held, since the report of Division 2 herein, to [fol. 166] be and now is a common carrier by water subject to Part III; that the said amending act enacts a new mandatory "National Transportation Policy" requiring administration of the Interstate Commerce Act as so amended (including said amended paragraph 4 of Section 3) to be fair and impartial to all modes of transportation subject to the provisions of the Act, and also for the first time subjects water carriers as such to the Interstate Commerce Act, and also requires administration of the Interstate Commerce Act as so amended (including said amended paragraph 4 of Section 3) to recognize and preverse the inherent advantages of each form of transportation including, for the first time, water transportation, and also requires administration of the Interstate Commerce Act as so amended to foster sound economic conditions among the several carriers, including for the first time water carriers and to develop, coordinate and preserve a national transportation system, including for the first time water trans-

portation therein, adequate to the needs of commerce and the national defense, and also to encourage establishment and maintenance of reasonable charges without unfair or destructive competitive practices.

In event the Commission is of opinion that the rate proposal in question should not be disapproved as unlawful under the subsequently enacted Transportation Act of 1940 upon the record made before that act was passed, nor upon notice taken of the matters found and concluded by the said report of Division 4 finding Petitioner to be a common carrier by water subject to Part III of that subsequent enactment, then Petitioner offers to show and in such event prays for a hearing and opportunity to show:

The order of Division 4 aforesaid.

Discrimination against him by said rate proposal.

[fol. 167] That the business of dealing in grain reshipped from the rate break points in question is so highly competitive that ex-barge grain could not be shipped on from the rate-break points by rail under the rate proposal (whereby combination barge-rail rates are higher than the all rail combinations).

That no ex-barge grain would move by rail from the rate-break points in question to New England or Trunk Line Territory destinations under the proposal.

That lake transportation furnishes no escape from any of the rate-break points reached by Petitioner except Chicago, Illinois; and that, as to Chicago, lake transportation furnishes no escape for ex-barge grain during the season of closed lake navigation which lasts about five months of each year (whereas Petitioner's operation is a year-round operation) and is inadequate even during the summer.

That if the proposal should become effective Petitioner's business would be crippled.

That the avowed purpose and effect of the proposal is to eliminate barge transportation of grain to Chicago contrary to the Transportation Act of 1940 and the provisions thereof heretofore mentioned.

That the penalty imposed by the proposal on the shipment of grain by barge to the rate-break points in question is not intended to be, and is not, actually or fairly related [fol. 168] to any difference in cost of rendering the service

by rail or by lake steamers on the one hand, and by barge on the other hand, or to any other consideration except only the intent of the rails to put the barge carriers out of the business, and destroy a form of transportation in this field, contrary to the Transportation Act of 1940 and the provisions thereof above mentioned.

That neither on the present record, nor in fact, is there anything to support the assertion that has been made herein that the only effect of the proposal would be to reduce the profits of certain elevator operators; that, on the contrary, the proposal would cripple Petitioner and barge transportation of grain to the rate-break points generally (and reduce the amount of money received for their grain by farmers having access to barge transportation).

That low cost water transportation in this field, against which the proposal is aimed, is an asset to the national defense and a natural resource which Congress has spent millions to make available.

No report herein, whether of the examiner, Division 2, or of the Commission, refers in any way to the rights of Petitioner under Paragraph 4 of Section 3 as amended by the Transportation Act of 1940, although the order of the Commission expressed to be effective on December 22, 1941, would take those rights.

Petitioner did not assert his said rights under the Transportation Act of 1940 at the hearings because he did not have them: the Transportation Act of 1940 had not been enacted. Petitioner now has been held to be a common carrier by water subject to Part III of the Interstate [fol. 169] Commerce Act as amended by the Transportation Act of 1940, in a collateral proceeding under that Act. Petitioner has never had a hearing on the matters herein presented touching the legality of said rate proposal under the Transportation Act of 1940.

Therefore, Petitioner (appearing specially, forasmuch as he does not and cannot consent to be bound as to his rights under the Transportation Act of 1940 on the record herein, that was made and closed before those rights existed) prays for a hearing as hereinabove set forth, and especially prays:

1. That in event the rate proposal in question is not held by the Commission to be illegal under the subsequently enacted Transportation Act of 1940 upon the present record

(and, if need be, upon notice by the Commission of said proceedings thereunder before Division 4) that he may be permitted to intervene in this proceeding and to present evidence to the proposition that said proposal is illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940, including the evidence hereinbefore specifically mentioned.

2. That the taking effect of the order of this Commission approving said proposal, now expressed to be effective on December 22, 1941, may be stayed, until this petition, and the said petition of your Petitioner heretofore filed herein, may be heard and decided upon.

And in further support of his petition, Petitioner respectfully states:

Petitioner filed a brief in connection with his said petition heretofore filed.

The report of the Commission takes no notice of the [fol. 170] rights of Petitioner hereinabove presented, and urged also in said former petition and brief.

Therefore Petitioner, in support of this petition, respectfully refers to said petition and brief and makes the same part hereof, and for convenience of reference (all parties having been heretofore served with a copy of said former petition and brief) includes a copy of said former petition and brief in the same binding with all filed copies hereof.

Respectfully submitted, A. L. Mechling, Doing Business Under the Trade Name and Style of A. L. Mechling Barge Line, By Edward B. Hayes, His Attorney.

Address: Edward B. Hayes, Room 1016 Insurance Exchange Building, Chicago, Illinois.

—— ——, being duly sworn deposes and says that he is —— ——, of A. L. Mechling, doing business under the trade name and style of A. L. Mechling, Barge Line, Petitioner herein; that he has read the foregoing petition and knows the contents thereof; that the same are true as stated except as to matters and things, if any, stated on information and belief, and as to those matters and [fol. 171] things he believes them to be true.

Subscribed and sworn to before me this — day of December, 1941.

—— ——, Notary Public.

Certificate of Service

I hereby certify that I have this day served the foregoing petition upon all parties or record in this proceeding by mailing a copy thereof, properly addressed, to each of them.

Dated at Chicago, Illinois, this 16th day of December, 1941.

Edward B. Hayes, Counsel.

[fols. 172-173] Before the Interstate Commerce Commission

I. & S. Docket No. 4718

Grain Proportionals, Ex-Barge to Official Territory

Petition and Special Appearance of A. L. Mechling, Doing Business under the Trade Name and Style of A. L. Mechling Barge Line, for Rehearing and Reconsideration of the Report Herein

[fol. 174] The petition of A. L. Mechling, an individual doing business under the trade name and style of A. L. Mechling Barge Line, specially appearing for the purposes hereof only, under that special appearance respectfully represents and prays:

This Petitioner could not be heard when the record on the facts was made and closed herein in January, 1940, to assert his rights (and necessities) as they now exist under the subsequently enacted Transportation Act of 1940, approved September 18, 1940.

Petitioner is now a regulated common carrier of grain by barge to Chicago, Illinois, for reshipment there to interstate or foreign destinations, under authority of the Act mentioned, and in conformity with its provisions, with published rates for that service on file with this Commission.

Unless Petitioner can have his rgihts and status under that Act, his business will be crippled. He earnestly prays the Commission not to destroy him by taking those rights in this proceeding, where he has not had any opportunity [fol. 175] to present evidence in support of them: the record

on the facts in this proceeding was closed before that Act existed.

Petitioner's new right to be a regulated common carrier by water, pursuant to Part III of the Interstate Commerce Act (enacted as part of said Transportation Act of 1940 after the record closed in this proceeding), is established and concluded upon another record elsewhere made before this Commission as required by said Act. And Petitioner refers to the order of Division 4 rendered in Docket No. W-630 of the files and records of this Commission and asks the Commission to take notice thereof, and offers to produce the same in evidence in this proceeding, and prays for the opportunity to do so unless the Commission will take notice thereof as fully and with the same force and effect as though produced in evidence herein.

As to Petitioner's new right not to be discriminated against by a rail rate, a right given said Transportation Act of 1940 (Section 5 (e), approved September 18, 1940, amending the Interstate Commerce Act, Section 3 (4)) and his rights under the New National Transportation Policy enacted by said Transportation Act of 1940, Petitioner has never had any opportunity to present evidence in support thereof herein, inasmuch as the record on the evidence in this proceeding closed before those rights existed. And Petitioner avers that the rail rate proposal under investigation on this proceeding violates his rights under Section 3 (4) as so amended and the new National Transportation Policy enacted by said Transportation Act of 1940.

Petitioner further prays, therefore (as a common carrier subject to Part III of the Interstate Commerce Act as amended by the Transportation Act of 1940, by finding and determination of this Commission since the report of [fol. 176] Division 2 herein) for a rehearing giving him the opportunity to present evidence and assert his rights under said Section 3 (4) as amended and said National Transportation Policy (unless the Commission should be of opinion without any further evidence that the rate proposal under investigation cannot be sustained.)

Petitioner further shows that the pendency of this Investigation and Suspension Proceeding on a rate proposal, gave no one any notice that established rates, or practices thereunder, were on trial, and that he was not party to the record on the facts, and that there is no basis within the

scope of the issues herein for any ruling upon established rates or practices thereunder. Petitioner shows further that as to any proceeding wherein the established rates mentioned in the report of Division 2 are ruled upon, the fact that Petitioner is now a common carrier under Part III both alters the situation respecting the propriety of those rates and also gives him a new and different interest therein, upon which he has never had opportunity to present evidence, and for both those reasons he is entitled to present evidence and be heard in any such proceeding. Petitioner therefore prays that the Commission will review and set aside the report of the majority of Division 2 touching established rates, as being outside the scope and issues of this I. & S. proceeding, and upon a record insufficient under the Interstate Commerce Act as now amended by the Transportation Act of 1940; but, if the Commission is of other opinion, then that said report touching established rates may be reviewed and set aside as erroneous; and if the Commission is of opinion that neither may be done without further evidence, then that he may have the opportunity to present such evidence and be heard thereon.

Therefore Petitioner (appearing specially, forasmuch as he does not and cannot consent to be bound as to any rights [fol. 177] under the Transportation Act of 1940 on the record herein, that was made and closed before those rights existed) prays for hearing as hereinabove set forth.

And in further support of his petition, Petitioner respectfully states:

Brief and Argument

1. Rights of Petitioner under Transportation Act of 1940, Enacted Since the Hearings Herein Were Closed

The hearings on the facts in this case closed on and prior to January 26, 1940.

The Interstate Commerce Act at that time could be argued to afford no protection to a carrier, not subject to what is now Part I of the Act, as to the particular traffic claimed to be the subject of a discriminatory rate.

> Nicholson Universal S. S. Co. v. Pennsylvania R. R. Co., 203 I. C. C. 637.

In that view (which seems to have been taken by the majority of Division 2 herein) no proof that any carrier,

not subject to Part I could possibily have offered at the hearings herein could have supported a claim that the rate proposal was an illegal discrimination against him at that time. (Case cited.) *

After the hearings closed in this proceeding, Congress enacted the Transportation Act of 1940, approved Septem- [fol. 178] ber 18, 1940. This Act amended the Interstate Commerce Act in many ways. It created Part III, subjecting water carriers to regulation. It enacted a new "National Transportation Policy" which included carriers by water in the national transportation system to be fostered in the administration of the Interstate Commerce Act (preceding Section 1). In particular, Section 5, paragraph e, of this amending act of September 18, 1940, amended Paragraph 4 of Section 3 of Part 1 of the Interstate Commerce Act to read:

"'(4) All carriers subject to the provision of this part (Part I) shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the Interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III.'"

This created a new factor of vital importance: When an incoming water line was a "common carrier by water subject to Part III" discrimination against it in the rail rate for the on-haul became illegal.

That was not before the Examiner when the record on the facts closed herein. Both the majority and minority of Division 2 find that record to be incomplete on the ques-

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* Whether he was a common carrier or not would be immateria; he was not subject to regulation, and that ended it. The point of the majority report of Division 2, as stated in the headnote, was that the inbound rates are "not subject to our jurisdiction." (Sheet 1.)

tion whether the water lines were common carriers at all.* [fol. 179] After passage of the Transportation Act of 1940 the Commission established machinery for the determination of the question whether any carrier was a "common carrier subject to Part II." This Petitioner, in conformity thereto, has now been found and held to be "a common carrier subject to Part III" (see order of Division 4, quoted in Appendix hereto. This order was entered since the report of Division 2).

Division 4, to which such matters have been referred, shows a better understanding of the new Act than the western rail carriers, who state: "The Transportation Act of 1940 did not change this situation insofar as commodities in bulk are concerned."** That statement is erroneous. There is no exemption of bulk commodities in the new Act: there is sometimes an exemption of transportation of not more than three bulk commodities in one tow or vessel—when no non-exempt commodities are in the tow or vessel, and when the commodities meet the definition of bulk commodities there made. (Section 303 (a), 303 (b).) As indicated in the findings of Division 4, it is a practical impossibility (for this water carrier at least) to engage in the transportation of bulk grain on an exempt basis. He must have authority under Part III; and he does have it. (See Appendix.) These matters have been concluded and settled by this Commission in a separate proceeding, held for the purpose under the Transportation Act of 1940, subsequently enacted. When the record was made in the caption proceeding no such questions existed.

At its beginning the Transportation Act of 1940 enacts a new "National Transportation Policy" for the administration of the Interstate Commerce Act. Expressions of the prior act were held precatory as pointed out in authority cited by the majority report of Division 2; this new Na- [fol. 180] tional Transportation Policy is in mandatory language and is referred to throughout the Act. It is hardly to be assumed that this new provision was intended to accomplish nothing. It is the first provision of the Interstate

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* Sheets 8 and 46.

** Page 22 of "Reply in behalf of the western carriers to the petition for rehearing," etc.

Commerce Act; and the only one expressly applicable to all the other provisions of the Interstate Commerce Act.

It seems to us that the new provisions of the Interstate Commerce Act in Section 3 (4), above quoted, acquire special force when read in connection with these other new provisions of the Interstate Commerce Act in the New National Transportation Policy:

"'It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy'."

(Interstate Commerce Act, preceding Section 1.)

[fol. 181] II. Violations of Petitioner's Rights under Transportation Act of 1940 by the Rate Proposal in Question

The facts have been somewhat ambiguously treated in some of the documents filed in these proceedings.

The facts are:

Grain comes to Chicago, Illinois, by rail, barge and lake steamer. The volumes are great; they are not consumed locally. "Chicago is the greatest corn market in the world. * * *" (Sheet 5.)

This movement into Chicago by rail, barge and lake steamer of grain for reshipment there to interstate and foreign destinations is, as a matter of common knowledge, one of the most conspicuous "streams" of interstate and

foreign commerce. The rail service for the on-haul for all this grain is exactly the same, whether it comes to Chicago by rail, barge or steamer. The rail rate for the on-haul has been the same for many years prior to the present proposal.

This proposal is not confined to corn, nor to Illinois origins. The distinction it proposes is not between inbound rates that are filed and those that are not.

The substance of the present proposal is correctly stated by Commissioner Alldredge:

"If the suspended schedules should become effective the situation would then be that the present proportional rates would continue in effect on grain brought to Chicago by rail and by lake vessel but the higher local rates would apply on grain brought in by barge over the Illinois Waterways." (Sheet 46.)

[fol. 182] As the map shows, the inland river waterway system of the country has access to Chicago over the Illinois River and Waterway, whatever the origin. Origins may be anywhere on the inland river system. Today such origins are at least as far west as Kansas City on the Missouri River, at least as far south as St. Louis on the Mississippi, and at least as far north as Burlington, Iowa, on the Mississippi, with many intermediate origins. This grain gets to Chicago over the Illinois River and Waterway.

The Federal (and state) Governments have spent millions in the improvement of this inland waterway system for navigation—about $60,000,000.00 on the improvement of the Illinois River and Waterway alone. (Sheet 3.) River navigation for such cargo is by means of strings of barges, moved by towboats. These improvements of the waterways have made barge transportation of grain to Chicago commercially important, by eliminating navigation difficulties. The result is that farmers having access to river transportation get more for their grain*—one of the inherent advantages of water transportation is low cost. That is what the Federal Government spent this money to achieve.

The substance of the present proposal, we repeat, is simply this: to force all grain arriving ex-barge at Chicago,

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* Sheets 13, 14.

Pekin, Ill., and similar rate break points to pay a higher rail rate for the on-haul east than grain arriving at the same points ex-rail—(or ex-lake steamer).

Examples of the penalty thus imposed on shipping grain to Chicago by barge, instead of by rail, vary from over fifty-three per cent (Norfolk, Va., Export) to over thirty [fol. 183] per cent (Boston, Mass., Domestic) of the total rate for the on-haul.*

The consequences to Petitioner and other barge lines of such a penalty on the shipment of grain to Chicago by barge are evident. (And if no grain comes to Chicago by barge, no ex-barge grain will go east by rail.)

It has been hinted in argument that ex-barge grain can escape from Chicago by lake. This overlooks the blunt fact that for about five months of every year winter closes lake navigation through the Straits of Mackinac—the only outlet from Lake Michigan. The lake bulk freighters that go east are laid up, out of commission, throughout that whole season. Petitioner's barge operation to Chicago and Pekin is a year-round operation; the inland waterways to Chicago on which petitioner operates are not closed in the winter. The Government maintains service at the locks there throughout the year; traffic is rarely interrupted by ice, and then only a few days at a time.

Even in summer there are not enough bulk freighters to handle the on-movement of the quantities of eastbound grain reshipped by rail from Chicago—and also handle the other lake bulk tonnage. The U. S. Maritime Commission, to keep the steel mills in ore, is now planning a dozen new bulk freighters for that trade. To handle the volumes of grain demanding reshipment east from Chicago in the summer alone, would take bulk freighters off the ore trade, and other bulk lake trades, from which they could ill be spared [fol. 184] (and would not be spared).**

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* Cf. tabular analysis, "Petition of Inland Waterways Corporation * * * For Rehearing and Reconsideration of the Report Herein," at page 11, as to New England and Trunk Line Territory destinations.

** To take them off the ore trade would be a direct blow at national defense. The ore trade is not the only lake trade of which that is true; e. g., the scrap steel trade, the coal trade, etc. It is common knowledge that lake tonnage is strained to the utmost today.

This Petitioner now has rights (and responsibilities) under Part III of the Interstate Commerce Act that he did not have when this record was made. How can he exist on a half-year basis—crippled, even during that half of the year, by the limitations of lake tonnage capacity? Petitioner's business is that of a common carrier of grain to all points on the Illinois waterway north of and including Havana, Illinois, for reshipment there to interstate and foreign destinations. (See appendix. There is no escape at all from any but one of these points by lake at any time of year; they are not on the lake.)

The penalty that would be imposed on shipping grain to Chicago or Pekin by barge (instead of by rail) is not related to anything but the intent of the rail lines, frankly stated on the record, to put the barge carriers out of the field.

The fact that the purpose of the present proposal was to put the barge lines out of the grain trade was frankly stated by the sole witness for the respondents (R. 90). No witness denied it; it is the fact, and the record on which decision was made by Division 2.

The majority of Division 2 did not mistake that fact; they gave it as a reason for approving the proposal. They say that the low barge rates have broken down the rail rate structure, by tempting the rails to publish intra-state rates to Chicago below the national rail base. (Sheet 45). The only way in which the proposal will remove the temptation of the rails to publish low intrastate rates is to put [fol. 185] the barge carriers out of the business. That is the only way it could remove that temptation, and the way in which it was intended to work—as the witness for the western lines stated (R. 90).*

Thus the right direction for administration of the Interstate Commerce Act, when water rates are lower than competing rail rates, is held to be to put the water carriers out of business (one step at a time).

Counsel for the rail lines stated an oral argument that water transportation ought to be confined to purely local

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* The next step—one required by the doctrine of the report—is elimination of the lake steamer carriers of grain to Chicago, as has been pointed out by the eastern lines who proposed this rate in their brief filed herein asking a rehearing, pp. 6, 7.

transportation; that is the basis on which this proposal is defended. Obviously this Petitioner, who is in the business of moving grain to reshipping points for reshipment there (Cf. Appendix) cannot exist at all on a purely local basis. Neither he (nor any barge carrier) can remain in the grain trade (nor in many other trades) on a purely local basis: they are not local trades. An administrative policy that would make water transportation purely local, while it was perhaps the best face that could be put on this proposal by counsel defending it before Division 2, really means destruction of this and many other water carriers. Such a policy seems to be in the teeth of Section 3 (4) as amended by the Transportation Act of 1940:

"All carriers subject to the provisions of this part (Part I) shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their lines and connecting lines. • • • [fol. 186] As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III."

It seems impossible to say, in view of such provisions, that Congress intended water transportation to be purely local—even if Petitioner and many other water carriers could exist on a purely local basis (as they cannot).

Again:

"All carriers subject to the provisions of this part (Part I) • • • shall not discriminate in their rates, fares and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term 'connecting line' means the connecting line of any carrier subject to the provisions of this part or any common carrier by water subject to Part III."

Interstate Commerce Act, Sec. 3(4) as amended by the Transportation Act of 1940, Sec. 5(e).)

These proponents, carriers subject to Part I, now propose to charge over 30% to 50% more for moving grain brought to Chicago and Pekin by this Petitioner, than they charge for exactly the same service for exactly the same kinds of grain that is brought in by rail or lake steamer.

The avowed purpose is to put the Petitioner and the other barge lines out of the business—to destroy that form of transportation in this field. The view of two commissioners on Division 2 was, that this is the right direction (as for the lake steamers, they say they are not involved—yet). [fol. 187] The policy of destroying water transportation and water carriers may or may not have been the right direction prior to the Transportation Act of 1940. But since that enactment, it is hard to read Section 3 (4), especially in the light of the new "National Transportation Policy," and not condemn a policy of destroying water carriers for the benefit of rail carriers (regardless of the effect on the public).*

This statutory prohibition of discrimination in rail rates against Petitioner and other common carriers by water, is new.

It is to be read in the light of a new requirement that the administration of the Act shall be "fair and impartial" to "all modes of transportation subject to the provisions of this Act." ‡ The destruction of water carriers for the benefit of rail carriers is not "fair and impartial" to water carriers.

Again, this new specific prohibition of discrimination is not only to be so administered as to be fair to water transportation, but is to be "so administered as to recognize and preserve the inherent advantage of each" form of transportation. One of the "inherent advantages" of water transportation is its low cost. The proposal, and the report approving it, make that inherent advantage a reason for destroying water transportation. So to administer the Act as to destroy water transportation on account of its inherent advantage, is not to recognize and preserve its inherent advantage. Why did Congress invest millions in the waterways (including millions in the Illinois Water-

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* The effect on the public of a policy of destroying low-cost water transportation finds forceful illustration in the fact here. Cf. Sheet 1, bottom.

‡ (Interstate Commerce Act, National Transportation Policy, preceding Section 1, as amended by the Transportation Act of 1940.)

way) if not to secure that advantage to the public? That Congressional policy, implemented with millions of dollars [fol. 188] of cash out of the pockets of the public, is not to be forgotten when, in amending the Interstate Commerce Act, Congress directs the Commission to recognize and preserve the inherent advantages of water transportation.

Again, Congress now says the aim of administration must be to "foster sound economic conditions in transportation and among the several carriers," and "all to the end of developing coordinating and preserving a national transportation system by water, highway and rail" adequate to the needs of "commerce" and of the "national defense." (Petitioner was a water carrier in this field when Congress used that language. (Cf. Appendix.) Congress then proceeded specifically to forbid the rails to discriminate in their rates against connecting water carriers such as Petitioner is now held to have been. (Sec. 3 (4).)

The policy of this proposal is frankly stated to be to eliminate entirely a method of transportation, for the precise reason that it is the lowest cost and most economic method in the field. It might be that water, rail or highway would be the most economic form in a particular field: its destruction—for that very reason—is scarcely consonant with the intent disclosed by Congress. That is equivalent, moreover, to the destruction of a national resource, a peculiar policy for a nation at war. (In this instance Congress has spent millions to make that resource available.)

Unlike the language of Section 3 (1) dealing with preferences and advantages, Section 3 (4) dealing with discrimination between carriers makes no qualifications as to what may be "due" or "reasonable." Discrimination is made illegal. No discrimination between carriers is "due" or "reasonable," or permissible in any way under any circumstances; it is flatly forbidden.

Can it be said that a rail carrier proposing a rate that [fol. 189] subjects grain reaching the reshipping point by barge, to a penalty of 30% to 50% for the on-movement, as compared to grain reaching the same point by rail, is not discriminating in its rates between the connecting lines—in favor of the connecting rail lines, and against the connecting barge-lines? There was no intent, and there is no pretense, that the difference was fairly or actually related

in any way to any consideration but the blunt purpose stated by the witness, to put the barge carriers out of the business (R. 90).

In view of the facts, the rails have not attempted to argue that the discrimination against the barge line, here proposed can be justified under the Transportation Act of 1940. The western rail lines argue, as above quoted, that the Act does not apply—that "The Transportation Act of 1940 does not change the situation so far as commodities in bulk are concerned." That, however, is simply in the teeth of the law. (Cf. Sec. 303 (a) and (303) (b), and Appendix.) Whenever the Federal Barge Line brings a barge of grain in bulk to Chicago in the same tow with a load of sacked grain (or any commodity not in bulk) the whole tow is subject to the Act, including the bulk grain (Sec. 303 (b).) Whenever Petitioner starts a towboat north from Havana with a tow of rye, wheat and oats in bulk, and has to pick up a barge of corn in bulk at Morris, all for Chicago, the whole tow is subject to the Act. (Cf. Sec. 303 (b) and Appendix.) Petitioner cannot operate as a practical matter on an exempt basis. That is not an open question in this case. Petitioner, we submit, never had a hearing on it in this case. But it has been settled in a collateral proceeding by this Commission under the Transportation Act of 1940.

It is obvious that the service rendered in taking the grain east from Chicago is exactly the same, whether the grain comes to Chicago by barge, lake-steamer, or rail. Grain [fol. 190] comes to a common basis at Chicago, regardless of means of transit thither; no one has disputed it.

If the rails can do what they here propose, they can dictate who shall serve the public in transportation of grain to Chicago—the rails, or the water lines. They state (R. 90) that this was exactly what they meant to do by this proposal as to the marge lines. Under the law today it is discrimination against connecting water lines, now defined by the statute as common carriers subject to Part III—and is forbidden by Section 3 (4) as now amended. That prohibition did not exist when this proposal was made, nor when this record was made and closed. Neither Petitioner (nor any other water carrier) had yet been held to be a "common carrier subject to Part III" when the report of Division 2 was written.

The law that applies is the law as it is now. The new rates are not in effect now. They will never become effective until this full Commission has acted. If it should approve them, these rates would operate under the Transportation Act of 1940—under which they are illegal. In I. & S. Docket No. 4150, Cancellation of Rates and Routes via Short Lines, 245 I. C. C. 183, 187, the question was (p. 186) whether paragraphs (3) and (4) of Section 15, effective after the hearings were held there, should apply when the final decision was made. The Commission said the sections were not retrospective. It held:

"In any event the amendment is remedial and we think its application in these proceedings is proper." (Idem, 187.)

It seems plain that rate proposals become effective only after the amendment of Section 3 (4) by the Transportation Act of 1940 are governed thereby. No one has contended otherwise.

[fol. 191] III. The Report of Division 2 Should Be Re-Examined and Reversed in View of the Transportation Act of 1940 and Subsequent Proceedings Thereunder.

The report of Division 2 concerned itself with the established rates.

Even the parties did not come prepared to try any such issue. This petitioner never was a party. While counsel for the western rail lines initiated the suggestion that he should testify as a witness (R. 1061) he was never a party nor represented by counsel. Pendency of an I. & S. proceeding on a proposal, advised no one (parties or others) that established rates were on trial.* Both majority and minority reports find the record so made incomplete to warrant a finding as to whether Petitioner was a common carrier. (Sheets 8, 46.) As for any other barge lines in the trade, none were parties (excepting only the Federal Barge Line). Petitioner has now been held a common carrier subject to Part III by the Commission under the regular procedure set up by it under the subsequent Transportation

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* The minority report points out that in this respect the majority report goes wholly outside the issues. (Sheet 46)

Act of 1940 for the determination of that question. (Df. Appendix.) ‡

[fol. 192] The major premise of the attack made on existing tariffs is that the rates of the connecting barge lines were not subject to the Commission's jurisdiction. The gist of the decision is so stated in the headnote of the majority report (Sheet 1) and this is made the basis of the criticism of established rates throughout. (E. g. Sheets, 19, 28.) Today the Petitioner, not the least of the barge carriers, in a common carrier subject to Part III; his rates are subject to this Commission's jurisdiction. (For aught this record shows, every barge carrier in the trade will be held to be in the same situation under the Transportation Act of 1940. It seems apparent that the whole basis of the attack made on the established rates has been destroyed by the statute which made the rates of Petitioner subject to the Commission's jurisdiction.

The reason why the reports of Division 2, in discussing the criticism of established tariffs, found it pertinent to

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‡ There is no conflict as to what Petitioner does. He actively solicits every shipper who has grain to ship via the Illinois River; serves every origin on that river from which grain has been transported to Chicago for reshipment there to interstate and foreign destinations; has transported grain for every merchant who has used barge transportation; does not render these services on any contract looking to the future (his bill of lading being often executed after a barge has been placed for loading on request of the shipper and grain loaded therein.) (Cf. abstract in opening brief of Chicago Protestants, pp. 31 to 33. There is no conflict as to what petitioner does. See U. S. v. Brooklyn Eastern District Terminal, 249 U. S. 296, 304; 63 L. ed. 613, 616; Terminal Taxicab Co. v. Kutz, 241 U. S. 252, 254, 60 L. ed. 984, 986; Smitherman & McDonald v. Mansfield etc. Co., 6 Fed. (2d) 29, 32. The frequency with which motor carriers were mistaken as to their status under the commerce legislation of Congress (whatever their status under the laws of the respective states) is familiar to the Commission. See Patman Contract Carrier Application, 2M. C. C. 194. But whatever this record may show (it was closed before the Transportation Act of 1940 created material matters here presented) the finding of Division 4 seems conclusive, and subject to no collateral attack.

say that the record here made warrants no finding one way or the other as to the common carrier status of the barge carriers was this:

Section 6 (11) b gives this commission authority to prescribe water-rail "proportionals" when the water line is a common carrier. The majority thought the established rate could not be sustained as a voluntary water-rail "proportional" in the absence of evidence that a connecting barge line was a common carrier.* The minority report differed, pointing out that (1) the old rates were not the issue; (2) the burden being on the rails to sustain their proposal to deny proportionals to the connecting barge [fol. 193] lines, the rails could not in any event sustain that burden and justify their proposal by a defect in the record; (3) that Section 6 (11) b, enlarging the Commission's jurisdiction to require water-rail proportionals when the water line was a common carrier, could not be regarded as restricting the Commission's jurisdiction—as depriving it of power to regulate the voluntary water-rail proportionals in this case "after they were once established"—a reply to the attack that had been made by the majority, outside the issues, upon the established rates.

It is evident that discussion of Section 6 (11) b arose in connection with the attack on the established rates. We repeat, they were not in issue. The established rates, Section 6 (11) b, and Petitioner's common carrier status, were not the issue before the examiner; it would have been a pure accident if the record had warranted any finding on the common carrier status of the barge lines. The Division was unanimous that it did not.

And it would have been obviously impossible for Petitioner to assert his rights under the Transportation Act

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* Inconsistently, it concedes the Federal Barge Line to be common carrier, but dismisses it with the statement that "this line has hauled little if any grain *the* Chicago from origins on the Illinois Waterway here considered." (Sheet 10.) By referring to the petition of that line for rehearing, it will appear that the statement is only relatively correct as to the past, and ignores the future, (pp. 9, 10.) Moreover, if only Illinois origins were considered, the proposal was not considered for what it was; it is not confined to Illinois origins.

of 1940 at that hearing. That statute was not then enacted. There was no such thing then as a common carrier subject to Part III with a right that rail rates should not discriminate against his connecting line; that enactment, forbidding discrimination, had not been passed; he could not have been heard to sustain a right that did not exist. But he has now been held to be a common carrier subject to Part III under the subsequent statute which forbids discrimination against him by rail rates. The basis of the attack on the established rates was that the in-carrier is not a regulated carrier. That basis is gone.

The attack on the established rates has a peculiar aspect, in view of the approval of the proposal: the criti- [fol. 194] cisms of the established rates are also true of the proposal.

For example, the established proportional rates are criticized incidentally on the ground that they invoke a "novel broad transit theory," in that there is no "continuity of movement" and no "fictional bridge" of transit, and thus the established rates are not proportionals. (Parenthetically, this Commission has repeatedly sustained water-rail proportionals where there were no such transit characteristics as the majority of Division 2 thought to be necessary; the view taken upsets unbroken practice of many years, repeatedly sustained, as to rates of the character of those mentioned in Section 6 (11) b and there referred to as "proportional rates."* The novelty is therefore in in the view taken by the majority of Division 2 as to what transit is necessary—and in the attack on established rates in an I. & S. proceeding.)

The ' fictional bridge" hitherto required by this Commission in the case of grain (and all fungible goods) has been the equating of grain received and grain reshipped. It is the same fiction applied in the law of sales of fungible goods and bailments of fungible goods. The law never has required the same kernels of grain or the same drops of oil; if it did, grain could never safely — put in any elevator or oil into a tank. If that invokes fiction, it has been

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* Cf. Lumber from San Francisco Bay Point, 78 I. C. C. 760, 767, and many other cases cited in the "Petition for Reconsideration," etc., by the Chicago Protestants, pp. 18, 19.

found necessary in every branch of the law in order to make it possible to deal with fungible goods commercially. To reject it in the field of transportation would be to cripple commercial activity in transportation law in a way that is wholly inconsistent with every other branch of the law. [fol. 195] There is no finding and no evidence whatever that the equation of grain received and grain reshipped cannot be as scrupulously maintained in the case of ex-barge grain as in the case of ex-rail grain, or ex-lake steamer grain. If established rates are going to be attacked on any contrary assertion, petitioner wants to be heard and present evidence. But, we repeat, the established tariff contemplated the same equation of grain received and re-shipped in the case of ex-barge grain as in the case of ex-rail or ex-lake steamer grain. The policing agency is the same. If there had been carelessness in complying with the established tariff that would not invalidate the tariff; no evidence of carelessness goes to the point that the equation cannot be as readily maintained in the case of ex-barge grain as any other grain.*

But the aspect of the report which seems peculiar is that the continuity of transit is just the same, no more and no less, in the case of ex-rail grain, ex-lake steamer grain and ex-barge grain—and the report which finds it insufficient as to ex-barge grain, finds it sufficient as to ex-rail and ex-lake steamer grain—sustaining the proposal to allow proportionals to the latter two, while denying it to the former. If the ability to maintain an equation of grain received and grain reshipped is enough continuity of movement to warrant the proptrional rates for ex-rail and ex-lake steamer grain, then why is it not enough for ex-barge grain? (And why is it enough when the in-bound rate is

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* That there had been a failure to state the kind of grain in one document in one instance (over the long period when these proportionals were given equally to rail, lake and barge grain) by another carrier (Sheet 31) would be a strange reason for invalidating the whole established tariff, in an I. & S. proceeding, incidentally crippling the Petitioner. Why ruin the Petitioner—when the Federal Barge Line is to enjoy proportionals because its rates are on file and "subject to our jurisdiction"? (Sheet 1.) Petitioner's rates are now on file and subject to the Commission's jurisdiction.

on file but not enough when the in-bound rate is not filed?) [fol. 196] Again, the report condemns the established proportionals for ex-barge grain, on the ground that the in-bound rate was not subject to the Commission's jurisdiction, but sustains the proposal, which is to allow proportionals to ex-lake steamer grain on which the in-bound rate was not subject to the Commission's jurisdiction. If the fact that an in-bound or on-bound water rate is not subject to the Commission's jurisdiction is now to make a voluntary water-rail or rail-water proportional illegal,* then how does the division sustain the proposal—which is to allow proportionals to ex-lake grain, on which the in-bound rate is not subject to the Commission's jurisdiction? The proposal, which was sustained, had exactly the same characteristic as the old rate, which was condemned therefor. And only the proposal was in issue.

We submit that the attempt to sustain this discrimination against barge carriers involves impossible contradictions, as well as an impossible result under the Transportation Act of 1940. Today, the in-bound rate is subject to the Commission's jurisdiction, destroying the whole basis of the attack on the established rate. And petitioner has been held a common carrier subject to Part III, subsequently enacted, by a statute which also forbade discrimination in rail rates against connecting lines who are common carriers subject to Part III (Sec. 3 (4) as amended). This enactment furnished new and conclusive objection to the proposal. The established rate is not subject to that objection. And it is not in issue.

[fol. 197] **IV. To Take Petitioner's Rights Under the Subsequently Enacted Transportation Act of 1940 on the Present Record Which Was Closed Before These Rights Existed Would Be to Take His Rights Without Hearing.**

Petitioner's rights to complain of discrimination against him did not exist when the hearings were held; they exist by virtue of the subsequent enactment of the Transportation Act of 1940 (especially Section 5 (e) thereof amending Section 3 (4)). The decision that petitioner is a common carrier subject to Part III, to whom that amendment applies, came even later.

* Contrary to a good many decisions that have been cited by the Chicago protestants. (Cf. their "Petition for Reconsideration," etc., pp. 18, 19.)

Petitioner could not be heard at the hearings to assert rights under a statute that had not been passed. He has never had a hearing in which he could assert those rights. The right to be heard includes the right to know the issue and to present evidence. The question of petitioner's right to be a common carrier under Part III did not then exist; it has since been decided and concluded. (See appendix.) But the issue of whether this proposal is a discrimination under Section 3 (4) did not exist either, when the hearings were held herein; and that has never been tried.

It would appear to petitioner that the present record requires the reversal of the conclusions of the majority of Division 2, both as to its attack on established tariffs and as to its approval of the rail rate proposal that is in question. (Cf. minority report of Commissioner Alldredge.)

But if the Commission is of other opinion, then petitioner submits that the decision of Division 4 (in the Appendix, should be noticed by the Commission, without the necessity of further hearings, and that this requires reversal of the majority of Division 2 upon grounds heretofore stated. If that decision cannot be noticed, or if the Commission considers that without still further factual information and evidence beyond that which is settled by the [fol. 198] order of Division 4, it cannot or should not reverse the report of the majority of Division 2, then petitioner desires to present evidence to the proposition that the rate proposal in question is illegal under the Interstate Commerce Act as amended by the Transportation Act of 1940, and in any such event he offers to produce evidence.

Petitioner submits that in thus asking for a hearing before any order is entered by the Commission that would be ruinous to him, he is only asking for the fair play that the law contemplates and that this Commission shows to all, and that is, indeed, enjoined upon all agencies of Federal power by the due process requirements of the Fifth Amendment to the Federal Constitution.

Respectfully submitted, Edward B. Hayes, Attorney for A. L. Mechling, Doing Business Under the Trade Name and Style of A. L. Mechling Barge Line.

Edward B. Hayes, 1016-175 W. Jackson Boulevard, Chicago, Illinois.

[fol. 199] APPENDIX I TO PETITION

Interstate Commerce Commission

No. W-630

A. L. Mechling Barge Line Common Carrier Application

Submitted October 1, 1941. Decided November 6, 1941

Applicant found entitled to continue operation as a common carrier by non-self-propelled carrying vessel in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana, Ill., by reason of having been engaged in such operation on January 1, 1940, and continuously since. Certificate of public convenience and necessity issued.

Edward B. Hayes for applicant.

Report of the Commission

Division 4, Commissioners Porter, Mahaffie and Miller.
By Division 4:

By application filed May 29, 1941, A. L. Mechling, an individual doing business under the trade name and style of A. L. Mechling Barge Line, of Joliet, Ill., seeks a certificate of public convenience and necessity under section 309 (a) of the Interstate Commerce Act authorizing continuance of operation as a common carrier by water, in interstate or foreign commerce, in the transportation of grain and soy [fol. 200] beans between all points on the Illinois Waterway[1] and on the Mississippi River between Burlington, Iowa, and New Madrid, Mo., inclusive. No objection to the application has been offered.

The application for the authority sought is based in part upon the so-called "grandfather" clause of section 309 (a), which provides for the issuance of a certificate

[1] The Illinois Waterway consists of the Illinois River, the Des Plaines River from the Illinois River to the Sanitary and Ship Canal, the Sanitary and Ship Canal, the Chicago River and its branches, the Calumet-Sag Channel, Little Calumet River, and Calumet River.

upon proof of bona fide operation on January 1, 1940, and continuously since. Such operation has been conducted between points on the Illinois Waterways north of and including Havana, Ill. The evidence submitted with the application establishes these rights, and a certificate will be issued authorizing the continuance of those operations. In addition applicant seeks authority to continue so-called "interim" operations south and west of Havana, which were begun between January 1, 1940, and February 1, 1941. To secure a certificate authorizing continuance of these latter operations, applicant must prove that they are or will be required by the present and future public convenience and necessity. The present record is insufficient to support this claim, and we will set this part of the application for hearing.

Applicant has been in operation since 1930. He owns and operates 7 towboats and 17 barges, and has under charter 4 other barges. He has transported soy beans and 7 kinds of grain in bulk during 1939, 1940, and 1941 from Havana, Pekin, Peoria, Chillicothe, Lacon, Henry, Hennepin, LaSalle, Ottawa, Seneca, Paytonville, and Morris Ill., to Chicago. Shipments were also shown to Pekin in 1939. After reaching destination the commodities generally [fol. 201] continue movement by rail or water carriers to points in other States or to foreign countries. On or before January 1, 1940, applicant served every grain shipper from every grain shipping point along this section of the Waterway. He has held himself out to serve all points along the Waterway and since the latter date has served points, other than those named, when the traffic became available. In view of these facts we conclude that applicant is a common carrier of Grain and soy beans, and that he should be authorized to operate between all points on the Waterway north of and including Havana.

Applicant furnishes transportation by barge and we will limit his service to that type of operation. Classification of carriers in terms of their type of operation assures the public that the same type of service will be continued by them. In this manner the competitive balance of types of carriers over the same route will not be disrupted by changes which they might make without first securing from this Commission the necessary certificate of public convenience and necessity. We will, therefore, as a general

policy employ such a classification in defining the operating rights of water carriers subject to part III of the act.

Although applicant has been transporting commodities in bulk, he does not claim exemption under section 303 (b) of the act, because practical operation requires transportation of more than three commodities in part of the tows.

We find that applicant was in bona fide operation on January 1, 1940, as a common carrier by non-self-propelled carrying vessels in interstate or foreign commerce, in the transportation of grain and soy beans between all points on the Illinois Waterway north of and including Havana; that such operation has been continued since that date; and that a certificate of public convenience and necessity [fol. 202] should be issued authorizing continuation of such operation, subject to general conditions which are necessary to carry out, with respect to continuation of applicant's operations, the requirements of part III of the act, and the orders, rules, and regulations of the Commission thereunder.

An appropriate certificate will be issued.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party of record.

Dated at Chicago, Illinois, this 12th day of December, 1941.

Edward B. Hayes, Counsel.

[fols. 203-204] APPENDIX TO COMPLAINT

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 21st day of January, A. D. 1942.

I. & S. No. 4718

Grain Proportionals Ex-Barge to Official Territory

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of petitions

of A. L. Mechling, doing business under the trade name and style of A. L. Mechling Barge Line, for leave to intervene and for rehearing and reconsideration, and of Finnegan Warehouse Company for reconsideration:

It is ordered, That the said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 205] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION TO PETITION OF THE SECRETARY OF AGRICULTURE FOR LEAVE TO INTERVENE AND TO FILE COMPLAINT—Filed February 12, 1942

Now comes the Interstate Commerce Commission, by its counsel, and in answer to the petition of the Secretary of Agriculture of the United States for leave to intervene as plaintiff herein in order to assert the grounds of complaint set forth in the proposed complaint attached to said petition, and respectfully shows:

1. The Interstate Commerce Commission interposes no objection to the petition of the Secretary of Agriculture for leave to intervene in this action.

[fols. 206-207] 2. In answer to paragraph 1 of the annexed complaint wherein the Secretary of Agriculture adopts by reference the complaint of the original plaintiff, Inland Waterways Corporation, with the exception of the first of the two paragraphs numbered 21 thereof, the Commission respectfully refers the Court to the answer filed by it to the complaint of Inland Waterways Corporation, plaintiff.

3. The Commision admits the averments of paragraph 2 of the annexed complaint.

4. In answer to paragraphs 3, 4, 5 and 6 of the annexed complaint, the Commission denies the materiality of each

and all of the averments therein to any issue before this Court and further suggests that the matters therein set forth are argumentative and to the extent that the same were material to any issue before the Commission were considered by the Commission in the making and entering of its report and order involved in this action.

5. The averments contained in paragraph 7 of the annexed complaint are denied.

Wherefore, The Interstate Commerce Commission prays that the intervening complaint of the Secretary of Agriculture be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 208] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Answer of the Interstate Commerce Commission to Petition of A. L. Mechling, Doing Business as A. L. Mechling Barge Line, for Leave to Intervene as Party Plaintiff and to Assert Grounds of Complaint—Filed February 12, 1942

Now comes the Interstate Commerce Commission, by its counsel, and in answer to the petition of A. L. Mechling, doing business as A. L. Mechling Barge Line, for leave to intervene as party plaintiff and to assert grounds of complaint as set forth in proposed complaint annexed to said petition, respectfully shows:

1. The Interstate Commerce Commission interposes no objection to petition of A. L. Mechling, doing business as A. L. Mechling Barge Line, for leave to intervene herein.

[fol. 209] 2. In answer to paragraph 1 of the annexed complaint wherein A. L. Mechling, doing business as A. L. Mechling Barge Line, adopts by reference the complaint

of the original plaintiff, Inland Waterways Corporation, the Commission respectfully refers the Court to the answer filed by it to the complaint of Inland Waterways Corporation, plaintiff.

3. The Commission admits the averments of paragraphs 2, 3, 4 and 5 of the annexed complaint.

4. The Commission denies the averments contained in paragraph 6 of the annexed complaint.

5. In answer to paragraph 7 of the annexed complaint the Commission admits that the Interstate Commerce Act was amended effective September 18, 1940, by the Transportation Act of 1940 to which reference is hereby made as to the nature and effect of said amendments; that the Commission on November 6, 1941, by order, held that A. L. Mechling, doing business as A. L. Mechling Barge Line, was a common carrier by water subject to Part III of the Interstate Commerce Act and issued a certificate of convenience and necessity under Section 309 (a) thereof. In all other respects the averments of paragraph 7 of the annexed complaint are denied.

6. In answer to the averments of paragraph 8 of the annexed complaint the Commission denies that A. L. Mechling, doing business as A. L. Mechling Barge Line, was denied opportunity to be heard with respect to the matters and things herein alleged, but on the contrary avers that A. L. Mechling, doing business as A. L. Mechling Barge Line, was present at the hearings before the Commission in these proceedings and had full opportunity to present any and all matters affecting his rights therein, but that the said A. L. Mechling did not see fit to become a party to said [fols. 210-212] proceedings although he did appear as a witness therein, and further that the said A. L. Mechling, following the report of Division 2 in said proceedings, filed a petition for leave to intervene asserting rights which he claimed to have been created by virtue of the Transportation Act of 1940; that the Commission gave full consideration to the effect of the Transportation Act of 1940 in its decision in these proceedings as will appear from its report and order of December 1, 1941, and made particular reference to the position of Inland Waterways Corporation, the original plaintiff herein, which was in substance the

same as that of the said A. L. Mechling; that thereafter the Commission received and fully considered the petition of said A. L. Mechling for reconsideration which said petition it denied by order of January 21, 1942.

7. The Commission denies the averments of paragraphs 9 and 10 of the annexed complaint.

Wherefore, The Interstate Commerce Commission prays that the intervening complaint of A. L. Mechling, doing business as A. L. Mechling Barge Line, be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 213] In District Court of the United States

Civil Action. File No. 3725

[Title omitted]

Petition of Intervention and Answer—Filed February 6, 1942

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Now come The Alton Railroad Company, a corporation under the laws of the State of Illinois, The Atchison, Topeka and Santa Fe Railway Company, a corporation under the laws of the State of Kansas, Chicago, Burlington & Quincy Railroad Company, a corporation under the laws of the State of Illinois, Charles M. Thomson, Trustee of Chicago & North Western Railway Company by virtue of an order entered by this Court in a proceeding pending therein, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by virtue of an order entered by this Court in a proceeding pending therein, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company by virtue of an order entered by this Court

in a proceeding pending therein, and Illinois Central Railroad Company, a corporation under the laws of the State [fol. 214] of Illinois, hereinafter referred to collectively as interveners, and move the Court for leave to intervene in the above-entitled cause, and to become parties thereto in order to protect their rights.

Each of the railroad corporations, parties to this petition, and each of the petitioning trustees at all times since the respective dates of their appointments as such, were and now are common carriers for hire engaged in the transportation of persons and property by rail in state, interstate and foreign commerce, and were and now are engaged in the operation of a line or lines of railroad within the State of Illinois, among other States, and in particular between Chicago, Illinois, and western points, including other points in Illinois. Interveners are parties in interest to the proceeding before the Interstate Commerce Commission in which the order herein complained of was made and were parties to and participated in said proceeding. They desire to intervene in this cause in behalf of the defendants, to answer the amended complaint herein, and to participate in the trial of said amended complaint as parties defendants.

The joint and several answers of interveners to plaintiff's amended complaint is as follows:

I

Interveners, in answer to Paragraph 1 in the complaint, deny the allegations of the last sentence therein.

II

Interveners admit the allegations of Paragraphs 2, 11, 12, 13, 15, 16, 17, 18 and 19 in the complaint.

III

Interveners, in answer to Paragraphs 3, 5, 6, 7, 8 and 9 in the complaint, admit that the said defendants are corpora- [fol. 215] tions as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

IV

Interveners, in answer to Paragraph 10 in the complaint, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein, except interveners admit that plaintiff conducts interstate transportation on a port-to-port basis without any common arrangement with rail carriers beyond Chicago for through transportation.

V

Interveners, in answer to Paragraph 14 in the complaint admit that the Interstate Commerce Act was amended by the Transportation Act of 1940 as alleged therein, and further aver that plaintiff has failed to call the Court's attention to other amendments to the Interstate Commerce Act by the Transportation Act of 1940, among which are the amendments now appearing as Section 3, paragraph (1) and Section 303, paragraphs (b) and (c).

VI

Interveners, in answer to Paragraph 20 in the complaint, admit the allegations of the first two sentences therein; and deny the allegations of the last sentence therein.

VII

Interveners, in answer to the first of the two paragraphs in the complaint numbered 21, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the second sentence therein; and deny all remaining allegations therein.

[fol. 216] VIII

Interveners, in answer to the second of the two paragraphs in the complaint numbered 21, deny each and every allegation therein.

IX

Interveners deny each and every allegation of the amended complaint not herein specifically admitted or otherwise specifically answered.

X

Further answering, interveners say:

1. That the assailed order of the Interstate Commerce Commission is not the character of order which this Court is authorized to enjoin or set aside, and this Court lacks jurisdiction to enjoin or set aside said order.

2. That this Court has no jurisdiction to enjoin the carriers made defendants herein by the plaintiff, or any one of said carriers, from making effective or enforcing any change or changes in their schedules of rates and charges for the transportation of persons or property by rail in interstate commerce.

3. That plaintiff does not have the interest or standing requisite to enable it to bring and maintain this suit.

4. That the amended complaint fails to state any cause of action or valid claim against the parties made defendants by plaintiff, or any of said defendants upon which the relief prayed for can be granted by this Court.

5. That in the proceeding before the Interstate Commerce Commission in which the order herein assailed was entered plaintiff was accorded the full hearing provided for in and by the Interstate Commerce Act; that at the hearing or hearings on the issues before the Interstate Commerce Commission a large volume of testimony and other evidence was submitted by plaintiff and others to the Interstate Commerce Commission for consideration; [fol. 217] that in briefs filed in said proceeding and in oral argument questions relating to said issues were fully argued in behalf of the parties by their respective counsel and were submitted to the Interstate Commerce Commission for determination; that the Interstate Commerce Commission determined the questions relating to said issues and entered its order here sought to be enjoined or set aside; that the evidence before the Interstate Commerce Commission supports the said order; and that in entering the said order the Interstate Commerce Commission exercised the jurisdiction and power conferred upon it by the Interstate Commerce Act in a just and lawful manner.

WHEREFORE, having fully answered, interveners pray that the relief sought by the amended complaint be denied and that the amended complaint be dismissed.

The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, by A. B. Enoch, Their Attorney.

Address: Room 1925 La Salle Street Station, Chicago, Illinois.

[fols. 218-222] STATE OF ILLINOIS,
County of Cook, ss:

A. B. ENOCH, being first duly sworn, deposes and says that he is the attorney representing the parties designated as interveners in the above-entitled cause and makes this affidavit in their behalf; that he has read the foregoing petition of intervention and knows the contents thereof; that the same is true to the best of his knowledge and belief.

A. B. Enoch.

Subscribed and sworn to before me this 23rd day of January, A. D. 1942. —— ——, Notary Public.

[fols. 223-224] IN DISTRICT COURT OF THE UNITED STATES

Civil Action. File No. 3725

[Title omitted]

ORDER—January 16, 1942

This cause was heard on defendants' motion for an order dropping Robert E. Woodruff and John A. Hadden, Trus-

tees, as parties defendant and directing plaintiff to summon Erie Railroad Company as an additional defendant herein, the affected parties having stipulated thereto, and the court being fully advised in the premises.

It is Ordered that Robert E. Woodruff and John A. Hadden, Trustees, be dropped as parties defendant and that plaintiff be and it is hereby directed to summon Erie Railroad Company as an additional defendant in this action and to serve an amended complaint, and that the answers heretofore filed may stand as answers to the amended complaint.

Charles E. Woodward, U. S. District Judge.

Dated: January 16, 1942.

[fols. 225-226] In District Court of the United States

No. 3725, No. 3714: Consolidated

Order—February 6, 1942

On motion of solicitors for A. L. Mechling, Doing Business as A. L. Mechling Barge Line, it is

Ordered that leave be and the same is hereby given it to Intervene in the above entitled cause.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CARGILL, INCORPORATED, et al.,
Plaintiffs.

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

Civil Action
File No. 3714

COMPLAINT
(EQUITABLE RELIEF SOUGHT)

WALTER, BURCHMORE & BELNAP,
Attorneys for Plaintiffs.

NUEL D. BELNAP,
Of Counsel.

2106 Field Building,
Chicago, Illinois.

BARNARD & MILLER, 33 S. Market St., Chicago. FRAnklin 0562

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

CARGILL, INCORPORATED,
NORRIS GRAIN COMPANY,
ROSENBAUM BROTHERS,
SANTA FE ELEVATOR CORPORATION,
CONTINENTAL GRAIN COMPANY,
Plaintiffs.

vs.

UNITED STATES OF AMERICA,
THE BALTIMORE AND OHIO RAILROAD COMPANY,
ROBERT E. WOODRUFF and JOHN A. HADDEN, Trustees of the Erie Railroad and of the Chicago & Erie Railroad Company,
THE NEW YORK CENTRAL RAILROAD COMPANY,
THE NEW YORK, CHICAGO, AND ST. LOUIS RAILROAD COMPANY,
THE PENNSYLVANIA RAILROAD COMPANY,
THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
Defendants.

Civil Action

File No. .....

COMPLAINT

1. The plaintiffs, Cargill, Incorporated, Norris Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, bring this complaint against the United States of America for the purpose of suspending, enjoining, setting aside, and annulling a certain order, more particularly hereinafter described, issued by the Interstate Commerce Commis-

sion (hereinafter referred to as the Commission) on December 1, 1941, in a proceeding before the Commission known as *Investigation & Suspension Docket No. 4718, Grain Proportionals, Ex-Barge to Official Territory*, said order being reproduced as Appendix C, on pages 17 to 47 hereof, and bring this complaint against defendants other than the United States of America (said defendants being hereinafter referred to collectively as carrier defendants) for the purpose of enjoining and prohibiting said carrier defendants from publishing and filing with the Commission tariffs or schedules of rates and charges found by the Commission in said order to be just and reasonable and not shown to be otherwise unlawful, and permitted by said order to be published and made effective, and from making effective and enforcing said rates and charges. This action arises, the United States is made a defendant herein, and the jurisdiction of this Court is conferred by U. S. C. Title 28, Sections 41 (28), 43, 44, 45, 45(a), 46, 47, and 48, as hereinafter more fully appears.

2. Plaintiff, Cargill, Inc., is a corporation organized and existing under the laws of the state of Delaware, with its principal office and place of business at Chicago, Illinois.

3. Plaintiff, Norris Grain Company, is a corporation organized and existing under the laws of the state of Illinois, with its principal office and place of business at Chicago, Illinois.

4. Plaintiff, Rosenbaum Brothers, is a corporation organized and existing under the laws of the state of Illinois, with its principal office and place of business at Chicago, Illinois.

5. Plaintiff, Santa Fe Elevator Corporation, is a

corporation organized and existing under the laws of the state of Illinois, with its principal office and place of business at Chicago, Illinois.

6. Plaintiff, Continental Grain Company, is a corporation organized and existing under the laws of the state of Delaware, with its principal office and place of business at Chicago, Illinois.

7. All of the plaintiffs are engaged at Chicago, Illinois, in the operation of public elevator facilities and in the merchandising of grain. In the course of that business, the plaintiffs purchase grain at Chicago which has arrived at that point via barge via the Illinois Waterways. (Said grain being hereinafter referred to as ex-barge grain.) The ex-barge grain so purchased is temporarily stored at Chicago in public elevators and subsequently is sold and reshipped by plaintiffs to purchasers located throughout the states of Indiana, Michigan, Ohio, Pennsylvania, New York, New Jersey, Delaware, Maryland, Virginia, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

8. Defendant, The Baltimore and Ohio Railroad Company, is a corporation chartered by the states of Maryland and Virginia; its principal office and place of business is at Baltimore in the state of Maryland; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Missouri, Illinois, Indiana, Kentucky, Ohio, West Virginia, Virginia, Pennsylvania, New York, Maryland, Delaware, New Jersey, and other states in the United States.

9. Defendants Robert E. Woodruff and John A. Hadden are trustees, duly appointed under the laws of the

United States, of the properties of the Erie Railroad and Chicago & Erie Railroad Company; their general offices and places of business are at Cleveland in the state of Ohio and at New York City in the state of New York; and they operate lines of railroad for the carriage of freight throughout the states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, and other states in the United States.

10. Defendant, The New York Central Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Ohio, Illinois, and Pennsylvania; its principal office and place of business is at Albany in the state of New York; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of New York, Massachusetts, Pennsylvania, Ohio, Indiana, Illinois, Michigan, West Virginia, Kentucky, Missouri, New Jersey, and other states in the United States, and Canada.

11. Defendant, The New York, Chicago and St. Louis Railroad Company, is a corporation operating under the laws of, and under an agreement of merger and consolidation filed in, the states of New York, Pennsylvania, Ohio, Indiana, and Illinois; its principal office and place of business is at Cleveland in the state of Ohio; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight throughout the states of Indiana, Illinois, Ohio, New York, Pennsylvania, Missouri, Michigan, and other states in the United States.

12. Defendant, The Pennsylvania Railroad Company, is a corporation incorporated under the laws of the state of Pennsylvania; its principal office and place of

business is at Philadelphia in the state of Pennsylvania; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Missouri, and other states in the United States, and Canada.

13. Defendant, The Chesapeake and Ohio Railway Company, is a corporation incorporated under the laws of the state of Virginia; its principal office and place of business is at Richmond in the state of Virginia; and it owns and/or operates, itself or through its subsidiary companies, lines of railroad for the carriage of freight to the District of Columbia and throughout the states of Illinois, Indiana, Ohio, Kentucky, West Virginia, Virginia, and other states in the United States.

14. Defendants above named (other than the United States) are common carriers, or trustees, or receivers, of common carriers, and are engaged in the transportation of property by rail in interstate commerce between various points on their lines and also between points on their lines and points on lines of railroad connecting therewith; and more particularly, as to grain arriving at Chicago via rail, via lake, and via barge from origins to the west, northwest, and southwest thereof, (grain so arriving being hereinafter referred to as ex-rail, ex-lake, and ex-barge, respectively) and temporarily stored at Chicago before reshipment therefrom, are engaged in the transportation of such grain upon the reshipment thereof from Chicago to destinations throughout the various states of the United States located to the east of Chicago.

15. For many years the carrier defendants have maintained in tariffs, lawfully published and filed with the Commission, the same separately stated proportional or reshippinng rates from Chicago, Illinois, to destinations located throughout the various states to the east thereof on ex-barge grain as on ex-lake or ex-rail grain, all of said proportional and reshipping rates being lower than the corresponding rates published for application to local grain shipped from Chicago and Chicago rate points. By tariffs filed to become effective October 15, 1939, (Supplement No. 23 to Agent B. T. Jones' I. C. C. No. 3047, Supplement No. 67 to Agent B. T. Jones' I. C. C. No. 3055, Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3300, and Supplement No. 7 to Agent B. T. Jones' I. C. C. No. 3372), the defendant carriers proposed (a) to restrict the application of the said reshipping and proportional rates so as to make them not applicable to ex-barge grain when reshipped from Chicago; and (b) to subject said ex-barge grain to the higher basis of the local rates from Chicago. Representative examples of tariff rules which then and now provide for the application of the proportional or reshipping rates to ex-rail, ex-barge, and ex-lake traffic, and representative examples of the tariff rules containing the proposed restriction are contained in Appendices II and III to the report of Division 2 in *Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory*, reported in 246 I. C. C. 353, and reproduced as Appendix B hereto. The plaintiffs filed with the Commission their written protest of September 1, 1939, and their supplemental written protest of October 3, 1939, against such schedules, alleging that, if made effective, the resultant increased rates pro-

vided for application to ex-barge grain would be unjust and unreasonable under Section 1 of the Interstate Commerce Act, unjust and discriminatory in violation of Section 2 of the Interstate Commerce Act, and unduly prejudicial and preferential in violation of Section 3(1) of the Interstate Commerce Act (U. S. C., Title 49, Sections 1, 2 and 3(1)), and praying that the Commission institute an investigation and suspension proceeding under the authority conferred upon it by paragraph (7) of Section 15 of the Interstate Commerce Act (U. S. C., Title 49, Section 15(7)).

16. Thereupon, the Commission, by order of October 14, 1939, reproduced herein as Appendix A, suspended the operation of said proposed change in rates and instituted an investigation into the lawfulness thereof in *Investigation & Suspension Docket No. 4718*, above mentioned, and the carrier defendants, by appropriate supplements to their tariffs, deferred the effective date of the above described proposed change in rates on ex-barge traffic, and said change in rates and charges has not yet been made effective.

17. Subsequent to the entry of the order shown in Appendix A, hearings were duly had in the proceeding instituted by that order, the parties were heard on brief and in oral argument, and on July 31, 1941, Division 2 of the Interstate Commerce Commission entered its report and order in said proceeding, said report and order being reproduced as Appendix B hereto. In that report and order the said Division 2 found that the tariff schedules under suspension had not been shown to be unlawful. Accordingly, Division 2 vacated and set aside the suspension order and discontinued the proceeding as of August 30, 1941.

18. On August 22, 1941, the Commission modified its

order of July 31, 1941, so as to become effective on October 15, 1941, instead of August 30, 1941.

19. Thereafter, the plaintiffs herein, under date of August 25, 1941, filed with the Commission their petition for reconsideration and reargument, urging that under the facts and the law Division 2 should have found the proposal to be unlawful and in violation of Sections 1, 2, and 3 (1) of the Interstate Commerce Act, and asking that the report and order of Division 2 be modified accordingly and that the Commission order a permanent cancellation of the suspended tariff provisions.

20. On September 30, 1941, the Commission further modified its order of July 31, 1941, as modified by its order of August 22, 1941, so as to postpone the effective date thereof until the further order of the Commission.

21. On December 1, 1941, the Commission issued its report and order on reconsideration in said proceeding, said report and order being reproduced as Appendix C hereto. In its said report the Commission found that the proposed schedules had been shown to be just and reasonable and had not been shown to be otherwise unlawful and by its order the Commission vacated and set aside its order of suspension as of December 22, 1941, and discontinued the proceeding.

22. If said order is permitted to become effective, and the defendant carriers make the change in rates and charges authorized thereby, the plaintiffs will be wholly unable to ship ex-barge grain via rail from Chicago to eastern destinations, since the difference between the rates then provided on a reshipment of ex-barge grain, on the one hand, and those provided on a reshipment of ex-rail or ex-lake grain, on the other, would constitute

a complete bar to the movement. Many hundreds of thousands of bushels of ex-barge grain are now being stored by plaintiffs at Chicago with a view to resale and reshipment to the east in the immediate future. That ex-barge grain was purchased on a basis, when delivered into Chicago elevators, whereby the plaintiffs paid for it the same as the prevailing prices on ex-barge or ex-lake grain of the same species and grade delivered at Chicago. The present value of that ex-barge grain at Chicago is precisely the same as the present value of a corresponding quantity of ex-lake or ex-rail grain of the same species and grade. No purchaser to whom plaintiffs might sell is willing to pay even a fraction of a cent more per bushel for ex-barge than for ex-rail or ex-lake grain. Under the tariffs found lawful by the Commission, the rate on ex-barge grain from Chicago to New York, as a representative destination, will be 8.5 cents per hundred pounds higher than the rate from Chicago to New York on ex-rail or ex-lake grain. The merchandising profit which plaintiffs are able to secure in the buying and selling of ex-barge, ex-rail, and ex-lake grain is substantially the same and does not exceed a fraction of a cent per hundred pounds. If the plaintiffs were to ship ex-barge grain on the basis of the rates proposed, they would suffer tremendous losses through being forced to absorb the 8.5 cent difference in freight rates above mentioned out of the prices received, and such losses would be direct and absolute losses and would not constitute a mere shrinkage of profits. Consequently, the ex-barge grain above referred to must remain in the elevators of the plaintiffs until the opening of navigation on the Great Lakes, some months hence, at which time it will be permitted to escape into the consuming territory via lake steamer, since lake steamers make no distinction in freight rates as between

ex-barge, ex-rail, and ex-lake grain. This will result in tying up the storage facilities of plaintiffs to the extent of the quantity of ex-barge grain now on hand, and will prevent plaintiffs from using such storage facilities in merchandising other grain. The profit in the merchandising of grain comes in the turnover and unless plaintiffs are in a position to turn over their stocks of grains with normal frequency, they are prevented from making the merchandising profits which they would otherwise obtain.

The foregoing circumstances relate to the immediate present and will continue until navigation opens on the Great Lakes which will be about the middle of April, 1942. Looking forward to that time, ex-barge grain would continue to be barred from rail reshipment from Chicago and would be restricted to reshipment via lake. In that situation, the plaintiffs would find it impossible to sell ex-barge grain for reshipment from Chicago to destinations which can be served only by all-rail routes, such as interior destinations in Michigan, Indiana, and Ohio. As a result, plaintiffs would be forced to confine their purchases of ex-barge grain to the quantities which they might anticipate selling to destinations which can be reached via lake or lake-and-rail routes from Chicago. This would compel a material reduction in the volume of business done by plaintiffs at Chicago and, in addition, would circumscribe and restrict their ordinary merchandising activities. In the event the tariffs found lawful by the Commission are permitted to become effective, the plaintiffs, by reason of the circumstances above described, will be subjected to irreparable damage and injury.

23. The report and order of the Commission of December 1, 1941, is unlawful and void and beyond the

power of the Commission to make for the following reasons:

(a) Said report and order are not supported by essential findings of fact;

(b) Certain findings of fact contained in said report on which the Commission predicated its final conclusion are without support in the evidence, and, in fact, are directly contrary to the evidence, particularly the finding in the report reading:

> "The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators."

(c) In entering said report and order, the Commission acted arbitrarily in that it declined to exercise the function and jurisdiction conferred on it by paragraph (7) of Section 15 and paragraph (11)(b) of Section 6 of the Interstate Commerce Act, (U. S. C., Title 49, Sections 15(7) and 6(11)(b) and concluded that the proceeding before it was not a proper one in which to prescribe proportional rates on the ex-barge traffic lower than local rates.

(d) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory powers in giving effect to the measure of the inbound rate or charge and the relative length and nature of the inbound transportation service in its determination of the lawfulness under Section 2 of the Interstate Commerce Act (U. S. C., Title 49, Section 2), of the proposal to assess on ex-barge grain a higher rate than is contemporaneously provided by a separately stated proportional or reshipping rate on ex-rail or ex-barge grain for precisely the same transportation service, be-

tween the same points, and via the same line of railroad.

(e) In entering said report and order, the Commission acted arbitrarily and exceeded its statutory authority in giving effect to the measure of the inbound rate and the relative length and nature of the inbound transportation service in its determination of the lawfulness under paragraph (1) of Section 3 of the Interstate Commerce Act (U. S. C., Title 49, Section 3(1)) of the proposal to make proportional and reshipping rates from Chicago to the east higher on ex-barge grain than on ex-rail or ex-lake grain.

WHEREFORE, plaintiffs pray:—

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until final determination of this cause, and that upon final hearing herein, a decree be entered perpetually enjoining, and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order;

(c) That plaintiffs have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

WALTER, BURCHMORE & BELNAP,
Attorneys for Plaintiffs.

NUEL D. BELNAP,
2106 Field Building,
Chicago, Illinois.

APPENDIX A.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 14th day of October, A. D. 1939

INVESTIGATION AND SUSPENSION DOCKET No. 4718

GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

It appearing, That there have been filed with the Interstate Commerce Commission tariffs containing schedules stating new individual and joint regulations and practices affecting rates and charges to become effective on the 15th day of October, 1939, and later, designated as follows:

Chicago and North Western Railway Company
(Charles M. Thomson, Trustee):
Supplements Nos. 7 and 9 to I. C. C. No. 10610;

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):
Supplements Nos. 8 and 10 to I. C. C. No. B-6931;
Supplements Nos. 8 and 10 to I. C. C. No. B-6932;

B. T. Jones, Agent:
Supplements Nos. 21 and 23 to I. C. C. No. 3047;
Supplements Nos. 64 and 67 to I. C. C. No. 3055 and MF-I. C. C. No. 16;
Supplements Nos. 4 and 7 to I. C. C. No. 3272 and MF-I. C. C. No. 30;
Supplements Nos. 4 and 7 to I. C. C. No. 3300;
I. C. C. No. 3356 and MF-I. C. C. No. 34;

L. E. Kipp, Agent:

Supplements Nos. 4 and 7 to I. C. C. No. A-3066;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of the regulations and practices stated in the said schedules contained in said tariffs, viz.:

Chicago and North Western Railway Company (Charles M. Thomson, Trustee);

Supplements Nos. 7 and 9 to I. C. C. No. 10610, on pages 2 thereof, all provisions shown under the caption "Reshipping or Proportional Rates from Chicago, Ill.";

Chicago, Milwaukee, St. Paul and Pacific Railroad Company

(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees.):

Supplements Nos. 8 and 10 to I. C. C. No. B-6931, on pages 3 thereof, all provisions shown under the caption "Application of Reshipping or Proportional Rates from Chicago, Ill.";

Supplement No. 8 to I. C. C. No. B-6932, on page 3 thereof, Item 500-C;

Supplement No. 10 to I. C. C. No. B-6932, on page 3 thereof, Item 500-D;

B. T. Jones, Agent:

Supplement No. 21 to I. C. C. No. 3047, on page 5 thereof, Notes 20, 25 and 35; on page 6 thereof, Notes 40 and 47;

Supplement No. 23 to I. C. C. No. 3047, on page 5 thereof, Note 20; pages 6 to 11 inclusive thereof, except Item 110-A;

Supplement No. 64 to I. C. C. No. 3055 and MF-I. C. C. No. 16, page 3 thereof; on page 4 thereof, Notes 38, 40 and 50;

Supplement No. 67 to I. C. C. No. 3055, and MF-I. C. C. No. 16, on page 3 thereof, Notes 20 and 22; pages 4 to 10 inclusive thereof, except Note 45;

Supplement No. 4 to I. C. C. No. 3272, and MF-I. C. C. No. 30, on page 2 thereof, Notes 1 and 22;

Supplement No. 7 to I. C. C. No. 3272, in full;

Supplement No. 4 to I. C. C. No. 3300, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. 3300, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47;

I. C. C. No. 3356, and MF-I. C. C. No. 34, the title page thereof insofar as it cancels schedules suspended by this suspension order; on page 90 thereof, Notes 20 and 22; pages 91 to 95 inclusive thereof; on page 96 thereof, Note 41; on pages 98 and 99 thereof, Note 50;

Agent L. E. Kipp:

Supplement No. 4 to I. C. C. No. A-3066, pages 2 to 5 inclusive thereof, except Note 44;

Supplement No. 7 to I. C. C. No. A-3066, on page 2 thereof, Note 20; pages 3 to 9 inclusive thereof except Note 44; on page 10 thereof, Note 47.

It further appearing, That said schedules make certain increases affecting rates for the transportation of grain, grain products, and grain by-products, carloads, in interstate and foreign commerce, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariffs should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariffs be suspended, and

that the use of the regulations and practices therein stated be deferred upon interstate and foreign traffic until the 15th day of May, 1940, unless otherwise ordered by the Commission, and no change shall be made in such regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That this order shall apply to said schedules only to the extent that said schedules apply to transportation subject to Part I of the Interstate Commerce Act.

And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and upon B. T. Jones and L. E. Kipp, Agents, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding, and that they be duly notified of the time and place of the hearing above ordered.

By the Commission, division 2.

(Seal)

W. P. BARTEL,
Secretary.

[fols. 244-288] Appendix B omitted. Printed side page 20 ante.

APPENDIX B.

Report of Division 2 of the Interstate Commerce Commission in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory, reported at page 353 in Volume 246 of the Interstate Commerce Commission reports.

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Appendix II and Appendix III to the Report of Division 2 in Investigation and Suspension Docket No. 4718, Grain Proportionals Ex-barge to Official Territory, 246 I. C. C. 353, as found at pages 385 to 388, inclusive, thereof.

APPENDIX II

Rules affecting the application of proportional rates applying on grain, grain products, and grain by-products, in carloads (using Chicago, Ill., as a representative reshipping point), to destinations in central territory and western termini points (including eastern trunk-line arbitrary points)[1]

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this note rates will apply as follows:

Rates apply as reshipping or proportional rates on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence, as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in Northwest Territory (as described below), or as otherwise stated; provided, that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination; the difference necessary to protect the local rate from the reshipping point to be added to the reshipping rate therefrom.

[1] These rules (or notes) are taken from Agent B. T. Jones' tariff I. C. C. 3300, effective June 30, 1939, and supplement 7 thereto, effective October 15, 1939.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

GRAIN (NORTHWEST)

Rates on Grain, subject to this Note will apply on Grain, carloads (see Note 5, page 71), originating in the following described territory:

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(e) On shipments which arrive by Boat Lines at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis.

GRAIN PRODUCTS AND FLOUR (NORTHWEST)

[This rule provides for the milling or malting in transit; also the milling, malting, mixing or reconsignment in transit, and specifies the points at which these services are to be performed.]

GRAIN PRODUCTS NAMED IN NOTE 10 BEARING REFERENCE * (STAR) (NORTHWEST) ALSO BY-PRODUCTS OF GRAIN (NORTHWEST)

Rates on Grain Products and By-Products of Grain, subject to this Note, will apply on Grain Products in Note 10, pages 72 and 73, bearing reference *(star) and on By-Products of Grain (see Note 15, page 74), carloads, originating in the following described territory.

(a) Points in Wisconsin.

(b) Points in Upper Peninsula of Michigan.

(c) Points west of the Minnesota-Wisconsin State Line, except points in Trans-Mississippi River Territory, as described in Note 20, pages 76 and 77.

(d) Points in the Dominion of Canada, viz.: All points in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

Note 40 in the suspended schedules was modified to read:

NOTE 40. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES ON TRAFFIC ORIGINATING IN NORTHWEST TERRITORY

Where reference is made to this Note, rates apply as reshipping or proportional rates on:

(a) Traffic reaching the reshipping point via a rail [1] transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point and will only apply on such traffic when originating at points in "Northwest Territory" as described

[1] Application via water transportation eliminated; except as otherwise provided in this Note, rates (not reshipping or proportional), will apply.

below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rate from the reshipping point to be added to the reshipping or proportional rate therefrom.

Description of Northwest Territory:

Points in Wisconsin.

Points in Upper Peninsula of Michigan.

Points west of the Minnesota-Wisconsin State Line except points in Trans-Mississippi River Territory as described in Note 20, pages 77 and 78 of tariff as amended.

Points in Dominion of Canada, viz.: all points in the provinces of Alberta, British Columbia, Manitoba and Saskatchewan.

(b) On Ex-Lake shipments which arrive by Lake Carrier Vessel at Chicago, Ill., Kewaunee, Wis., Mackinaw City, Mich., Manitowoc, Wis., Menominee, Mich., Manistique, Mich., and Milwaukee, Wis. (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz., Rivers, Canals and connecting waterways). These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail lines from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

NOTE 45. APPLICATION OF RESHIPPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line (except Illinois Grain moving via water transportation line) that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will ONLY APPLY on such traffic when originating at points in the territory as described below; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to destination, the difference necessary to protect the local rates from the reshipping point to be added to the reshipping or proportional rate therefrom.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

A-1. Rates on Grain (see Note 5, page 71), from Chicago, Ill., * * * subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

A-2. Rates on Grain Products (see Note 10, pages 72 and 73) from Chicago, * * * subject to the provisions of this Note, apply on shipments of Grain Products originating beyond (except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, pages 76 and 77), or Northwest Territory (see Note 40, page 83).

* * * * *

Note 45 in the suspended schedules reads substantially as above, except that the second paragraph begins with the words "Except as otherwise provided in tariff, as amended," and the words "or water," in the third line, and the parenthetical phrase beginning in the third line and ending in the fourth line, reading "(except Illinois Grain moving via water transportation line)" have been eliminated, and a new paragraph has been added, reading:

"These rates will also apply on shipments moving to Pekin, Ill., under rates published in Illinois River Packet Co., Tariff No. 41-O, I. C. C. No. 66, and Spring Lake Packet Co., Tariff No. 41-N, I. C. C. No. 59, supplements thereto or successive issues thereof."

APPENDIX III.

Rules affecting the application of proportional rates applying on grain, grain products, and byproducts of grain, in carloads, (using Chicago, Ill., as a representative reshipping point) to destinations in trunk-line and New England territories, and other eastern points, including certain points in eastern Canada [1]

NOTE 20. APPLICATION OF RE-SHIPPING OF PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the out-bound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rate from the re-shipping point to be added to the re-shipping rate therefrom.

* * *

[1] These rules (or notes) are taken from supplement 58, Agent B. T. Jones' tariff, I. C. C. No. 3055, effective June 30, 1939, and supplement 67 thereto, effective October 15, 1939.

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, * * * via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

* * * * *

Note 20 in the suspended schedule reads:

APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.

Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on:

(a) Traffic reaching the re-shipping point via a rail †† transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point, and will only apply on such traffic when originating at points from which no joint through commodity rates are in effect in connection with the in-

†† Application via water transportation ÷ eliminated; except as provided in this Note, rates (not re-shipping or proportional) published in tariff as amended will apply.

÷ Increase.

bound carrier via the re-shipping point from original shipping point to final destination; provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the local rate from the re-shipping point to destination, the difference necessary to protect the local rates from the re-shipping point to be added to the re-shipping rate therefrom. * * *

(b) On ex-lake shipments which arrived by Lake Carrier Vessel at Chicago, Ill., * * * (Will not apply on Ex-River, Canal, River-Canal or Canal-River traffic, arriving via Illinois waterways, viz: Rivers, Canals and connecting waterways, except rates will apply on shipments moving from Kansas City, Mo., to Chicago, Ill., under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, I. C. C. No. 148, supplements thereto or successive issues thereof. These rates are applicable on Ex-Lake shipments as of the date such shipments are reshipped via rail from the Lake Ports named above.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points from which no joint through commodity rates are in effect, not stopped in transit at re-shipping points subject to this application.

APPENDIX C.

INTERSTATE COMMERCE COMMISSION

INVESTIGATION AND SUSPENSION DOCKET NO. 4718
GRAIN PROPORTIONALS EX-BARGE TO OFFICIAL TERRITORY

DECIDED DECEMBER 1, 1941

1. Proposed restriction of reshipping or proportional rail rates on grain and grain products, in carloads, from Chicago, Ill., and other grain rate-break points to eastern destinations, so they will not apply on ex-barge (Illinois Waterways) traffic shown to be just and reasonable and not shown to be otherwise unlawful.

2. Such rates on the ex-barge traffic found legally applicable in the past where the policing provisions of the governing tariffs were strictly complied with.

3. Findings in prior report, 246 I. C. C. 353, clarified and modified accordingly.

Appearances noted in prior report.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

By schedules filed to become effective October 15, 1939, respondent rail carriers in official territory propose to restrict their reshipping or proportional rates on grain and grain products, in carloads, from Chicago, Ill., and other related grain rate-break points, to eastern destinations so they will not apply on ex-barge (Illinois Waterways) traffic. Upon protest of numerous interests the schedules were suspended, hearing was held, the matter was made the subject of a proposed report by the examiner, exceptions and replies to exceptions and oral argument before division 2. In the prior report, 246 I. C. C. 353, the division found that the application of such rates on the ex-barge traffic was without tariff authority and that the proposed schedules merely clarified this situation and were not shown to be unlawful. An order was entered vacating the order of suspension and discontinuing the proceeding.

Petitions for reconsideration addressed to all of the division's findings have been filed by certain protestants, as follows: (1) The so-called Chicago protestants operating elevators and dealing in grain at Chicago, (2) Illinois Agricultural Association, representing shippers located on the Illinois Waterways, (3) Finnegan Warehouse Company, operating an elevator on the Waterways, (4) Inland Waterways Corporation, operating the Federal Barge Lines, and (5) United States Department of Agriculture.

The Montana Flour Mills Company, which operates a mill at Cleveland, Ohio, and ships grain from Kansas City by barge to Chicago, thence by rail, but did not appear at the hearing,

has filed a petition for "leave to intervene," accompanied by a similar petition for reconsideration, addressed to all of the division's findings. However, as it does not give any explanation whatever as to why it did not appear at the hearing, its petitions must be, and are hereby, rejected under Rule II of our Rules of Practice, and will not be further considered. Petitions for reconsideration addressed solely to the division's finding under section 6 of the act were filed by respondents and intervener Chicago Board of Trade. Respondents filed a reply to protestants' petitions,[1] and the intervening western rail carriers filed a reply to all of the petitions. Thereupon the effective date of the vacating order was postponed until the further order of the Commission. The only protestant seeking a further hearing is the Federal Barge Lines, which points out that since the hearing it and certain other barge lines have filed their port-to-port grain rates with us, but this is a fact of which we can take official notice. Certain of the parties ask for reargument. Under the circumstances, we think that no useful purpose would be served by further hearing or reargument and that the matter can properly be disposed of in this report with a view to determining what, if any, modification or clarification of the division's findings should be made on reconsideration of the record in the light of the petitions and replies and our prior decisions.

At the time of the hearing, the barge lines were not subject to our jurisdiction and of course had no rates on file with us. The present tariffs naming the pro-

[1] The western carriers urge that the division's findings are correct under section 6 as well as under sections 1, 2 and 3 of the act.

portional rates carry a so-called limitation rule, whereby they "are applicable only when the entire movement is performed by rail carriers or water-and-rail carriers under rates lawfully on file with us" except that such rule does not affect rates "published carrying provision that such rates are applicable on ex-river, ex-ocean, or ex-lake traffic." They also carry a provision that they will apply on grain reaching "the shipping point via a rail *or water* transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and the rat paid to the reshipping point." To trunk-line territory, they specifically apply to ex-lake grain. To central territory, there are three sets of proportional rates, designated, respectively, as "trans-Mississippi", "Northwest", and "reshipping (Illinois)", the "Northwest" proportionals specifically applying on "shipments which arrive by boat lines at Chicago." The Northwest proportionals are in certain instances higher, and in certain instances lower, than the Illinois proportionals. The rate tariffs are made subject to the transit rules and regulations published in tariffs lawfully on file with us, including the policing rules and a so-called fourth-section rule providing that "in no case shall the combination rate to and from the reshipping point be less than the local rate from the reshipping point." In the proposed schedules, the words "or water" and the provision as to boat lines are omitted, and the rates are made applicable to ex-lake traffic to both central and trunk-line territories.

I. & S. Docket No. 4718—Sheet 3.

The division found that there was and is no common arrangement between the barge lines and respondents for through routes on this traffic, that the ex-

barge traffic cannot comply with the transit rules where the rates for the inbound water haul are not on file with us, and that the maintenance of barge-rail combination rates so much lower than the all-rail rates, particularly where the inbound water haul is so short, results in a breaking down of the all-rail grain rate structure from adjacent origins in Illinois and Indiana. It construed the words "or water" in the present tariffs as referring only to water carriers having rates on file with us. It held that under the circumstances the application outbound of any rate other than the local rate was and is illegal under section 6, that the proposed schedules are not unlawful under section 1, and that the circumstances and conditions surrounding the inbound and combination movement of the ex-barge traffic are so different from those surrounding the inbound and through movement of the ex-rail and ex-lake traffic as not to constitute a violation of sections 2 and 3 of the act.

As to section 6, the division in effect held that a proportional rate by a carrier subject to the act is never legal under section 6 unless the other factor of the through rate is lawfully on file with us under paragraph 7 of that section or applies by common carrier by water under paragraph 11(b) thereof. As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act. Under the circumstances, we think that the division's finding under section 6 is not warranted as applied to shipments of this ex-barge grain where the policing provisions were strictly complied with, namely, adequate proof was furnished of the identity of the in-

bound water carrier, the origin of the traffic, and the inbound rate paid thereon.

To Chicago, the inbound barge rates range from 2.75 to 4.5 cents for hauls ranging from 57.5 to 200.9 miles, as contrasted with the inbound interstate rail rates ranging from 9.5 to 13 cents. Rates are stated in cents per 100 pounds. The proposed schedules will result in increases in the barge-rail combinations ranging from 1.5 to 7.5 cents to central territory and in a uniform increase of 8.5 cents to trunk-line territory. The proposed ex-barge rates, which are the same as the local rates, range from 17.3 to 25.7 per cent of first class and are substantially below the level of the sixth-class rates (27.5 per cent of first class) which has been prescribed or approved as a reasonable maximum basis in official territory.

To central territory, the barge-rail combinations, even under the proposed schedules, will still be generally lower than the all-rail rates. From Morris, Ill., a representative origin, via Chicago, to Indianapolis, Ind., Detroit, Mich., and Circleville, Ohio, the barge-rail combinations will be 1.75, 4.75, and 0.75 cents, respectively, lower than the all-rail rates.

To trunk-line territory, the inbound barge movement represents a very small proportion of the total haul. The distance from Morris to Chicago by river, 57.5 miles, plus 880 miles rail short line to New York is 937.5 miles. The water portion

of the haul is but 0.6 per cent. To this territory, the barge-rail combinations are far below the local rates from the reshipping points in contravention of the fourth-section rule, while the all-rail rates are in strict

conformity with that rule. The present barge-rail combination from Morris via Chicago to New York is 28.75 cents (composed of the inbound barge rate of 2.75 cents plus the outbound proportional rail rate of 26 cents), or 5.75 cents lower than the 34.5-cent local rate from Chicago, while the all-rail rate from Morris is 35.5 cents (composed of the inbound interstate rail rate of 9.5 cents plus the outbound rate of 26 cents), or one cent higher than the local rate from Chicago. Under the proposed schedules, the barge-rail combination from Morris to New York will be 37.25 cents (2.75 cents inbound plus 34.5 cents outbound), or 2.75 cents higher than the local rate from Chicago and only 1.75 cents higher than the all-rail rate.

To central territory, the ex-rail proportional rates are made 3 cents higher from the Northwest than from trans-Mississippi territory so as to equalize the Twin Cities with Kansas City in connection with the inbound rail rates. The inbound haul in connection with the ex-lake traffic is from the head of the lakes or beyond and is much longer than in connection with the ex-barge traffic. The rail-lake-rail rates from the Northwest are therefore much higher than the local rates from Chicago or the barge-rail combinations and do not contravene fourth-section principles or jeopardize the all-rail rate structure.

The proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the profits of the Chicago elevator operators. Furthermore, these operators will still have the benefit of the outbound proportional rates where their inbound haul is by rail or lake and also the benefit of the outbound lake or lake-and-rail rates, irrespective of their inbound haul,

and this is likewise true of the Illinois shippers where their inbound haul is by rail or barge, respectively.

Protestants maintain that the proposed schedules will be unreasonable, unjustly discriminatory and unduly prejudicial against Chicago, the ex-barge traffic, shippers, elevator operators, and dealers interested in the ex-barge traffic, and the Federal Barge Lines as a connecting line, and unduly preferential in favor of other lake ports, ex-rail and ex-lake traffic and in favor of shippers, elevator operators and dealers interested in ex-rail and ex-lake traffic and respondents' connections by rail and lake. This is based primarily on the fact that under the proposed schedules the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same. But the latter is also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges. To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound

and through service. It follows that the protestants' allegations cannot be sustained in this proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local

rates or joint barge-and-rail rates lower than the combinations.

The facts of record as detailed by the division and summarized herein, clearly show that respondents are justified under section 1 in treating the ex-barge traffic the same as local or ex-truck traffic and that the proposed schedules cannot be condemned as unlawful under sections 2 and 3 of the act.

On reconsideration of the record in the light of the petitions and replies thereto and our prior decisions, we find that:

(1) The proportional rates here under consideration were legally applicable on the ex-barge traffic where the so-called policing provisions were strictly complied with.

(2) The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful.

The prior findings, 246 I. C. C. 353, are modified and clarified accordingly. The above enumerated petitions are denied in all other respects.

An appropriate order vacating the order of suspension and discontinuing the proceeding will be entered.

COMMISSIONER LEE concurs in the result.

EASTMAN, *Chairman*, dissenting in part:

For many years the respondent railroads have applied eastbound from Chicago what they termed "reshipping or proportional rates," which were lower than the corresponding local rates, on grain and grain products brought to Chicago by rail or by water. Similar rates were applied under like conditions from certain related points, but Chicago is the point of predominant importance. These reshipping rates were applied from

the beginning on grain brought to Chicago by lake vessel and, after the opening of the Illinois Waterways, they were applied on grain brought in by waterway barge. In the suspended schedules it is proposed to eliminate their application to this barged grain.

Division 2 concluded "that the proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," and found "that the schedules under suspension are not shown to be unlawful." The conclusion as to the applicability of the rates in the past met with vehement protests from all parties to the proceeding including respondents, except the intervening western railroads, and it is now reversed, almost without discussion.

I. & S. Docket No. 4718—Sheet 6.

I agree with this reversal, but believe that in view of the elaborate discussion of this matter by division 2, the reasons why its conclusion was unsound should be pointed out clearly and explicitly.

After citing *Kansas City Transp. Bureau* v. *Atchison, T. & S. F. Ry. Co.*, 16 I. C. C. 195, 201, to the effect that a "proportional rate means a part of or a remainder of the through rate or it means nothing at all," and *Kansas City Board of Trade* v. *Atchison, T. & S. F. Ry. Co.*, 69 I. C. C. 185, 188, to the effect that it is well settled that reshipping and proportional rates "are inseparably connected with and form parts of the rates applying to through transportation," division 2 relied primarily on the following from *Chicago and Wisconsin Points Proportional Rates*, 17 M. C. C. 573, 575:

> We have found that a proportional rate is one which applies to a part of a through transportation

which is entirely within the jurisdiction of the Interstate Commerce Act, and that it means a part of, or the remainder of, a through rate, or it means nothing at all. (Emphasis supplied.)

The division went on to say that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common carriers by water. It is elemental that a proportional factor is but a part of a through rate. It follows that the proportional rate and the rate with which it is combined to make a through rate must be on file with us."

Singularly enough, after concluding from this reasoning that the "proportional rates here in issue have never been applicable on this barge traffic moving on unfiled rates," the division found that the "schedules under suspension are not shown to be unlawful." Yet, as stated in the present report, the reshipping or proportional rates are by those schedules "made applicable to ex-lake traffic to both central and trunk-line territories," and it is conceded that the rates charged by the lake carriers are not on file with us or within the jurisdiction of the act and that these lake carriers are not common carriers. The same reasoning which led the division to conclude that the reshipping or proportional rates had never been legally applicable on the ex-barge grain would clearly require a similar conclusion as to the ex-lake grain; but this fact was ignored.

It was not ignored by respondents, and hence their protests against the decision. They saw in it, and correctly, the enunciation of a principle which would condemn, not only the application of the reshipping or proportional rates in issue on ex-lake grain, but also the many other rates of like characteristics which have for

years been published to apply to rail transportation to or from inland or coastwise ports on traffic carried from or brought to the port by unregulated contract or private water carriers. They cited the numerous cases in which we have over many years prescribed or approved such rates, which we have sometimes termed rates "in the nature of proportional rates" and which are known variously as ex-lake, ex-river, ex-ocean, lake cargo, reshipping, transshipment, import, and export rates. As is stated in the present report, in considering the principle enunciated by division 2:

> I. & S. Docket No. 4718—Sheet 7.
>
> As petitioners point out, under this principle many so-called ex-lake, ex-river, or lake cargo rates would have to be condemned in the past where the prior or subsequent transportation was by a carrier not subject to the act.

This is, indeed, the sole reason given for finding that the conclusion of division 2 upon this matter of rate applicability was "not warranted." Obviously the fact thus stated does not in itself prove that the principle is wrong. The matter, therefore, plainly calls for further consideration.

As shown above, division 2 relied primarily on the statement in *Chicago and Wisconsin Points Proportional Rates, supra*, (I dissented from that decision) that we "have found that a proportional rate is one which applies to a part of a through transportation *which is entirely within the jurisdiction of the Interstate Commerce Act*," qualifying this statement, however, by another to the effect that the "only traffic excepted by law from this requirement is that subject to section 6(11)(b) of the act, which is limited to common car-

riers by water." No citation followed the statement quoted from the *Chicago and Wisconsin case*, and I have been able to locate no case where such finding was made. *Conference Ruling 304(b)* did define a proportional rate in this manner, but our conference rulings were long since rescinded as unreliable. Furthermore, I call attention to the paragraph which followed the statement quoted:

> These proposed rates derive no validity from such analogy as they may be thought to bear to proportional rates by rail to and from the ports which differ from the corresponding local rates and which apply on traffic brought to or carried from the ports by common carriers by water, or to so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to contract carriers by water. In section 6(13)(c) of part I of the act the publication of proportional rates by rail to or from the ports which differ from the corresponding local rates, and which apply on traffic that has been brought to the port or is carried from the port by a common carrier by water, is specifically authorized. Part II of the act contains no similar authorization, either express or implied, for the publication of proportional rates, such as these, in connection with the truckload rates of common or contract carriers subject to part II or the carload rates of common carriers by railroad subject to part I. All the carriers, including respondents, which would participate in the through transportation contemplated by respondents' tariffs are subject to either part I or part II of the act and are therefore amenable to the provisions of those parts governing the publication of rates and to regulations which we have promulgated thereunder. Consequently, the reports, including the report in *Tariffs Embracing Motortruck or Wagon Transfer Service*, 91 I. C. C. 539, cited by respondents, in which we have recognized the legality of so-called

> proportional rates or rates in the nature of proportional rates published by certain

> rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water, are not in point. Where, as here, both the carriers into and out of the reforwarding points are subject to the Interstate Commerce Act, we have in no case given our approval to proportional rates lower than local rates, except when the hauls for which the proportional rates apply are parts of through movements of like units of shipment from primary origins to ultimate destinations.

It will be noted that in this paragraph it is made clear that "we have recognized the legality of so-called proportional rates or rates in the nature of proportional rates published by certain rail carriers for application on traffic received from or delivered to carriers not subject to the act, including contract carriers by water," and one of these cases is cited. In that case, as it happens, a dissenting opinion relied on *Conference Ruling 301(b)*. The case, therefore, definitely overruled that conference ruling. The paragraph cites section 6(13)(c) [now 6(11)(b)] as justification for these cases, without explaining how this could be so in view of its limitation to traffic brought to or carried from the port by a common carrier by water. Finally the paragraph, in effect, limits the previous statement "that a proportional rate is one which applies to a part of a through transportation which is entirely within the jurisdiction of the Interstate Commerce Act" to situations where "both the carriers into and out of the reforwarding points" are subject to the act, which is not the situation here under consideration.

As often happens, confusion has been caused by definitions. The act contains no definition of a "proportional" rate except that which is found in section 6(11)(b), which was originally enacted in the Panama Canal Act of 1912 and reads as follows:

> By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

Yet proportional rates which do not conform to this definition have from the very beginning been published by the railroads and been recognized as lawful and prescribed by us. It is clear that the definition was for the particular purposes of the Panama Canal Act paragraph in which it is found and which authorizes us to prescribe "proportional rates by rail to and from the ports to which the traffic is brought, or from which it is taken by the water carrier." The history of the Panama Canal Act makes it evident that this provision was motivated by a fear that the Commission might not prescribe such rates in the absence of definite prompting by Congress.

In our decisions, also, references will be found to "true proportional" rates as distinguished from those which are "in the nature of proportional rates." The carriers have often conformed to such a distinction by using, where the through transportation is subject only in part to our jurisdiction, some

other designation than "proportional", such as "reshipping", "transshipment", "ex-lake", "ex-river", etc. But this is a matter of no importance except to those who are concerned with precise terminology.

There is nothing in the act which makes a "true proportional" rate lawful or which makes a proportional rate unlawful if it is not of this Simon pure variety. The real question is whether rates, by whatever names they may be called, are lawful which are lower than the corresponding local rates and which are confined in their application to traffic that has had a prior or will have a subsequent movement to or from a point beyond.

One answer to this question, and the one given in all of the petitions, is that the Commission has in many past cases, and consistently, approved and even prescribed rates of this character, and has done so, not only where the prior or subsequent movement was subject to its jurisdiction, but also where it was not, including many situations where the prior or subsequent movement was by contract or private carriers. This is a persuasive answer, but I think it is well to go further and show that these past decisions are sound.

The significant and questionable thing about proportional rates or rates of like nature is that they are normally less than the corresponding local rates. Manifestly this fact does not in itself make them unreasonable under section 1. Whether it makes them unjustly discriminatory under section 2 is a more difficult question. For convenience I quote that section:

> That if any common carrier subject to the provisions of this part shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this part, than it charges,

demands, collects, or receives from any other person or persons for doing for him or them *a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. (Emphasis supplied.)

As between local rates and lower proportional rates between the same points, the essential questions under section 2 are whether they apply to like kinds of traffic and whether the transportation is under substantially similar circumstances and conditions. Sometimes a dissimilarity in the immediate circumstances and conditions of transportation can be shown, as in the case of the lake-cargo coal rates, where the concentration of deliveries at a very few points makes the service cheaper than that rendered under the local rates, which permit deliveries at many points over a wide terminal area. In other cases, however, as in the present proceeding, no dissimilarity of this character can be shown.

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In a very early case, *New York Board of Trade and Transp.* v. *Pennsylvania R. Co.*, 4 I. C. C. 447, the Commission found it unlawful, under section 2, for railroads to charge less on import traffic from ports to inland destinations than on like domestic traffic from and to the same points. There was no evidence of any difference in the costs of service. The decision was reversed by *Texas & P. Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197, on the principal ground that the circumstances and conditions, more particularly the commercial and competitive conditions, surrounding the two forms of traffic were dissimilar. Later

decisions of the Supreme Court, however, indicate that the "circumstances and conditions" to which section 2 refers are those which are incident to the transportation service rendered and not those which are extraneous thereto, and that the "exigencies of competition," in particular, do not justify discrimination. *Wight* v. *United States*, 167 U. S. 512; *Interstate Commerce Commission* v. *D., L. & W. R. R. Co.*, 220 U. S. 235; *Interstate Commerce Commission* v. *B. & O. R. R. Co.*, 225 U. S. 325; *Seaboard Air Line Ry. Co.* v. *United States*, 254 U. S. 57; and *A., T. & S. F. Ry. Co.* v. *United States*, 279 U. S. 768. A recent decision of the court, *United States* v. *Trucking Co.*, 310 U. S. 344, 352-3, has this interesting pronouncement:

> The Interstate Commerce Act does not attempt to define an unlawful discrimination with mathematical precision. Instead, different treatment for similar transportation services is made an unlawful discrimination when "undue", "unjust", "unfair", and "unreasonable." And the courts have always recognized that Congress intended to commit to the Commission the determination by application of an informed judgment to existing facts, of the existence of forbidden preferences, advantages and discrimination.

In a footnote to which reference is made in the last quoted sentence, the court refers to the *Texas & Pacific case*, above cited, as an "apparent exception, at an early date before the function of the Commission had become fully outlined against the background of time and the empiric pattern of litigation."

Nevertheless the Commission, in the exercise of this apparently rather wide discretion, has not since the *Texas & Pacific case* found import or export rates, or other rates in the nature of proportional rates, to be in violation of section 2 because they were lower than

corresponding local rates, and in my judgment with good reason. It may be argued with considerable force that although the traffics to which the two kinds of rates apply are the same in content, the dissimilarity in their origins or destinations and in commercial and competitive conditions prevents them from being a "like kind of traffic" within the meaning of section 2. However, I think the sounder view is that there is an essential dissimilarity in attendant circumstances and conditions as between local traffic and traffic which is being transported part of the way from an origin or to a destination which lies beyond, and that this dissimilarity is not extraneous to the transportation service rendered but incident thereto, for the reasons which follow.

As railroad rates are made, by long-established custom, those for long hauls normally are relatively lower mile for mile than those for shorter hauls, and often to a greater extent than

is justified by the fact that terminal costs are a constant factor. In other words, some preference has commonly been given to the longer hauls, and this has met with rather general approval. This tendency has not been confined to situations where joint rates are in effect. It has also prevailed where the through charges have been on a combination basis and the principle could be given effect by the railroads only through the publication of proportional rates and the like. Nor has it been confined to hauls which are wholly by rail, for it has been extended also, and quite naturally, to hauls which are partly by rail and partly by some other form of transportation, and regardless of whether the latter is subject to the Interstate Commerce Act.

This thought was expressed quite definitely and explicitly in *Central Pennsylvania Coal Producers Assn.* v. *B. & O. R. Co.*, 196 I. C. C. 203, 235-6, as follows:

> Except as to traffic to nonadjacent foreign countries, the operators allege that the maintenance to the ports of Philadelphia and Baltimore of transshipment rates which are different for inside-the-capes than for outside-the-capes traffic, contravenes the provisions of section 2 of the act. As previously stated, *the rail service rendered all transshipment coal is substantially the same.* The coal, which is charged the outside-the-capes rates, other than that which is exported, usually moves to New York Harbor or to New England, and that charged the higher inside-the-capes rates generally moves a relatively short distance by water to points within the respective harbors. *Transshipment rates, like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed.* We have found on various occasions that proportional rates which vary in amounts depending on the origins or destinations are not unlawful because of that fact. *Southern Kansas Grain Asso.* v. *C. R. I. & P. Ry. Co.*, 139 I. C. C. 641. *Transshipment rates are also similar to export rates in that we have no jurisdiction over the transportation which takes place beyond the transshipment piers.* We have found that the maintenance of different export rates from the same origin to the same port, dependent upon the foreign destination, is not unlawful. *Western Export Iron and Steel Case*, 4[illegible] I. C. C. 129. In *Detroit* v. *C. & O. Ry. Co.*, 77 I. C. C. 98, division 1 found, among other things, that a rate on coal from mines in West Virginia to Toledo, for transshipment to Detroit, Mich., which was higher than on coal destined to certain west-bank Lake Michigan and Lake Superior ports, was not unjustly discriminatory. It is significant that transshipment rates to the ports of Philadelphia and Baltimore, varying according to whether the destination of the traffic was within or beyond the

capes, *have been maintained for over a quarter of a century without complaint under section 2* of the act, although they have been assailed under other sections of the act by various interests, including these complainants. The latter, in the

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Eastern Bituminous Coal case, sought outside-the-capes rates that would have widened the spread under the inside-the-capes rates that then existed and still exist. Upon the facts of record we are of the view that the transshipment rates assailed are not unjustly discriminatory. (Emphasis supplied.)

It will be noted that the railroads there maintained "transshipment" rates on coal which were in the nature of proportional rates and lower than the corresponding local rates; that there were two sets of these "transshipment" rates, one lower than the other, dependent on the ultimate destinations of the coal at the end of the water haul, although substantially the same rail service was rendered all transshipment coal; and that the transportation by water was not subject to our jurisdiction. Yet the Commission found that there was no violation of section 2, either in the fact that the transshipment rates were lower than the local rates or in the fact that one set of transshipment rates was lower than the other. The reason given was that such rates "like proportional rates, may vary between the same points so as to reflect, to some extent, the proportion of the through charges that the service rendered thereunder is of the entire transportation service performed."

Stating the principle in another way, while the transportation service rendered between two points under a local rate and under a proportional or other like rate may be physically identical, yet it is not performed under circumstances and conditions which are similar in

the one case and in the other, for the transportation for which the proportional or other like rate is charged is part of a through movement from or to a point beyond, whereas *the transportation for which the local rate is* charged is complete in and of itself. It is quite true that in those instances where the two services are physically identical, there is no difference in cost which can justify making the proportional or other like rate lower than the local rate, except such as may possibly result from a difference in the volume of movement; but cost of service is not the only factor that may properly be given weight in the making of railroad rates, as we have often recognized. The practice of charging less for transportation which is a part of a longer through haul than for strictly local transportation between the same points has the sanction of accepted custom, and in my judgment it is the chief justification for the proportional rates or rates of like nature, lower than the corresponding local rates, which we have in so many cases approved or prescribed, although difference in cost of service has often been an additional justification.

Turning from section 2 to section 3, the same considerations apply, with the addition that the exigencies of competition may also justify differences in rates under the latter section, and, to establish violation, proof of injury from the differences is also necessary. Those who are charged the higher local rates are seldom able to furnish such proof, because of the lack of a competitive relation with those who pay the lower rates.

These are the reasons, stated explicitly and fully to the best of my ability, why I agree with the reversal of the conclusion of division 2 "that the proportional rates here in issue have never been applicable on this barge traffic moving

on unfiled rates." Lest there be misunderstanding, however, let me say that it does not follow from these reasons that a proportional rate or rate of *like nature* may not be unreasonable under section 1 or that it may not, under certain conditions, violate either section 2 or section 3; nor does it follow that such rates must always be established. They merely go to the point that the mere fact that such rates are lower than corresponding local rates does not in itself prove a violation of any of these sections.

The present report makes the further finding that "The proposed schedules are shown to be just and reasonable and are not shown to be otherwise unlawful." With this I do not agree. It is prefaced by a brief discussion which I quote here for convenience in reference. The contention that the schedules are unlawful is, according to the report, based primarily on the result that "the ex-barge rates will be higher than the ex-rail or ex-lake rates although in each instance the physical carriage beyond the reshipping point is substantially the same." It is said that this is "also true of local grain, grain brought in by truck, or by rail under intrastate rates, or grain which has forfeited its transit privileges." Then follows this comment:

> To adopt protestants' premise would mean that all proportional rates lower than local rates and differing from each other according to the origin of the commodity would have to be condemned. As pointed out by the division, reshipping or proportional rates are in their essence balances of through rates. Such balances are of course determined by the measure of the inbound and through rates and properly may vary according to the relative length and nature of the inbound and through service. It follows that the protestants' allegations cannot be sustained in this

proceeding, although in a proper proceeding we might prescribe proportional rates on the ex-barge traffic lower than local rates or joint barge-and-rail rates lower than the combinations.

To trunk-line and New England territories, the reshipping rates now apply uniformly on ex-rail and ex-water shipments, and they do not differ with the length or character of the inbound haul or with the origin territory. To central territory, there are three different sets of reshipping rates. Those designated "Trans-Mississippi" are the lowest and apply on ex-rail grain from territory of which Kansas City is representative. Those designated "Illinois Reshipping" are somewhat higher and apply on ex-rail grain from origins in Illinois. Those designated "Northwest" are uniformly 3 cents higher than the "Trans-Mississippi" rates and are generally higher than the "Illinois Reshipping" rates. They apply on ex-rail grain from territory of which Minneapolis is representative, and also on both ex-lake and ex-barge grain. After the proposed schedules take effect, the reshipping rates will cease to apply, with very minor exceptions, on all ex-barge grain, but will continue to apply, as above indicated, on all ex-rail and ex-lake grain.

The report states that the "proposed schedules will not prohibit the movement by barge-rail even to trunk-line territory, their principal commercial effect being to reduce the

profits of the Chicago elevator operators." I do not so understand the evidence. The table on page 361 of the prior report shows clearly that the farmers are paid the Chicago market price less the "costs incident to making delivery at Chicago," which consist mainly of

the transportation charges. It follows that the farmers whose grain can be transported by barge receive the benefit, in the prices paid for their grain, of the low barge rates, and that this benefit does not go to the Chicago elevator operator. For this reason, ex-barge grain has exactly the same value in the elevator as ex-rail or ex-lake grain, and naturally it will not be moved eastbound on local rates when ex-rail or ex-lake grain can be moved at the much lower reshipping rates.

While it is true, to some extent, that the combination of the barge rate to Chicago plus the local rate eastbound is lower than the combination of the rail rate from the same origin point to Chicago plus the reshipping rate eastbound, this fact will not enable the ex-barge grain to move from Chicago on the local rate, because the benefit of the low barge rate now goes to the farmer and cannot be used by the elevator operator to offset the higher level of the local rates as compared with the reshipping rates. In other words, the grain is brought by the Chicago operator and is shipped thereto without knowledge of where it will go after it reaches Chicago, and the through combination rates to eastern points do not enter into the transaction. This is, of course, true of practically all grain shipments to primary markets, and the through transportation which is reflected in proportional or reshipping rates therefrom is to this extent fictional; but it is no more fictional in the case of this ex-barge grain at Chicago than it is of grain which moves from the farms into the primary market of Kansas City.

As I understand it, the effect of the proposed schedules, unless the prices paid to the farmers whose grain is barged are reduced, will be to limit the outlet of the ex-barge grain to local consumption in Chicago and to

the lake and lake-rail routes to eastern points. If this outlet is sufficient, the situation will not be changed, except that the rail respondents will be deprived of the ex-barge traffic. If it is not sufficient, however, as in the winter months when the lake routes are closed, the producers of the grain which is now barged will either have to ship by rail to Chicago, with a consequent sacrifice in prices received, or sustain a similar sacrifice by accepting less from Chicago buyers for barged grain than they now receive. It is significant that a witness for respondents testified that the schedules under suspension were proposed "with the hope that we could drive this business off the water and back onto the rails where it belongs." If this hope is realized, the farmers who now ship by barge will certainly suffer in the prices paid for their grain. However, the effect of the proposed schedules is not the primary question, but whether they are in violation of the law.

In view of the long continuance of the reshipping rates and having in mind the level of the proportional rates which we have prescribed on grain in western territory, it can be urged with force that the local rates are unreasonable, under

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section 1, for application on this ex-barge grain. However it is unnecessary to go into this, if, as I believe, the proposed schedules are clearly unlawful under sections 2 and 3.

Considering section 2, it is conceded that the "physical carriage beyond the reshipping point is substantially the same" on the ex-barge grain as on the ex-rail and ex-lake grain, and the traffic in all three instances is clearly "like traffic." So far as the circumstances and

conditions are concerned which relate to the haul beyond the reshipping point when considered as a part of a through haul, the reasoning of the report seems to be that, comparing the ex-barge with the ex-rail and ex-lake grain, these circumstances and conditions are dissimilar because of the differences in the "relative length and nature of the inbound and through service." Therefore it is not unlawful, under section 2, to charge more for an eastbound haul of ex-barge grain from Chicago than for an identical haul of ex-rail or ex-lake grain.

While we have found that proportional rates or rates of like nature may lawfully vary with the length and nature of the haul to or from the point beyond, it is not necessary that there be such a variance, and the fact is that ordinarily there is none. This is as true of the proportional rates which we have prescribed as of those which the carriers have voluntarily established. Here there is now no variance whatever in the reshipping rates to trunk-line and New England territories. They are the same whether the inbound haul is by rail or by water or whether it is short or long. It is now proposed to cancel the application of these rates to ex-barge traffic, even if it moves from such comparatively distant points as Kansas City and St Louis, but to continue to apply them to ex-rail or ex-lake traffic regardless of the length and nature of the inbound haul. Clearly if the rule of variance is to be followed at all, it must be equally applied, and it cannot be invoked to defend a variation which is wholly inconsistent with the rate structure as a whole.

When it comes to the reshipping rates to central territory, there is a variation which is now dependent partly on the general origin territory in which the grain

originates and partly on whether it moves by rail or by water. To all ex-water traffic, however, reshipping rates now apply which are as high as any of the lot, except to a relatively few points in central territory, to which somewhat higher reshipping rates apply on grain originating in Illinois and moved by rail to Chicago. The "Northwest" rates, which are the ones which apply on the ex-water traffic, are uniformly 3 cents higher than the "Trans-Mississippi" rates, and they average higher than the "Illinois Reshipping" rates. They apply to the ex-lake traffic whether it originates at Duluth or at some relatively nearby port on Lake Michigan, and they apply on the ex-barge traffic whether it originates at Kansas City or at some point quite near to Chicago on the Illinois Waterway. Much the same is true of the reshipping rates which apply on the ex-rail grain. It could be argued with force that the present rate situation is unjustly discriminatory as respects the ex-barge grain, for if it originates at Kansas City or St. Louis, it is charged reshipping rates which are 3 cents higher than those which apply on ex-rail grain from the same points, and if it originates

in Illinois, it is charged reshipping rates which average materially higher than those which apply on ex-rail grain from the same points or points in the same general territory. Certainly there can be no defense, based on the length and nature of the inbound haul or any other circumstance, for depriving the ex-barge grain entirely of the benefits of the reshipping rates while permitting such rates, of the same or a lower level, to apply on ex-rail and ex-lake grain whatever the point of origin or length of the inbound haul.

Clearly this is a case where it is proposed to charge

persons shipping ex-barge grain a greater compensation than is charged other persons shipping ex-rail or ex-lake grain for a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," and clearly, also, this would result in a violation of section 2.

The same facts which spell a violation of section 2, if the proposed schedules become effective, likewise spell a violation of section 3, when coupled with the positive evidence that these schedules will result in injury to the producers of ex-barge grain, at least during the season when transportation by lake from Chicago is not available. In this connection it was pointed out in the prior report that under section 3(1), as amended by the Transportation Act of 1940, "undue discrimination, prejudice, or disadvantage by rail carriers to traffic of any other carrier, by water for example, is not unlawful." The undue prejudice with which I am concerned, however, is not to the operators of the barge lines but to the shippers of the grain.

I realize that under the doctrine enunciated by the Supreme Court in its recent decision in *United States v. Trucking Co., supra,* any decision which the Commission reaches in its wisdom with respect to a violation of section 2 or section 3 is likely to be sustained, if questioned in court. That, however, is an additional reason for great care in arriving at our decision.

Question has been as to whether the failure to apply reshipping rates to grain which has been trucked into Chicago results in violation of sections 2 and 3. This question is not here in issue. My tentative opinion upon it is that where the movement by truck is from territory from which grain can be moved by rail or by water

to Chicago subject to the application of the reshipping rates eastbound, the failure to apply such rates to the grain brought in by truck does result in violation of sections 2 and 3, provided adequate provisions for the identification and policing of such shipments are practicable and enforceable. The prior report reflected doubt as to whether such provisions are practicable with respect to the ex-barge grain, but in the present report it seems to be conceded that they are practicable with respect to such grain, although they may not have been properly enforced in the past, and with this view I agree.

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ALLDREDGE, *Commissioner*, dissenting:

The issues in this proceeding were defined by the suspension order. This order brought in question the lawfulness of the suspended schedules. It did not, of course, present any issue concerning the lawfulness of respondents' rates or practices in the present or past. The section 6 finding in the prior report, therefore, was not in response to any issue presented, was in disregard of the rights of all of the parties to a hearing, and was, therefore, clearly improper. Of course, I have no objection to the present report to the extent that the finding is rescinded, but generally I disagree for reasons stated in my dissenting expression in the prior report.

I am authorized to state that Commissioners PORTER and JOHNSON join in this expression.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of December, A. D. 1941

Investigation and Suspension Docket No. 4718

Grain Proportionals Ex-Barge to Official Territory

It appearing, That on July 31, 1941, division 2 made and filed its report and order in the above-entitled proceeding, and that subsequently certain petitions for reconsideration and replies to said petitions, enumerated in the report of the Commission of this date, were filed;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed its report on reconsideration of the record in the light of said petitions and replies and our prior decisions, in which report the findings of division 2 are modified and clarified in certain respects, and which report, together with said report of division 2, are hereby referred to and made parts hereof:

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of the schedules enumerated and described in said order, be, and it is hereby, vacated and set aside as of December 22, 1941, and that this proceeding be discontinued.

By the Commission.

(Seal) W. P. BARTEL,
Secretary.

[fol. 329] In District Court of the United States

Civil Action. File No. 3714

[Title omitted]

Answer of Interstate Commerce Commission—Filed January 23, 1942

Now comes the Interstate Commerce Commission, one of the defendants herein, by its counsel, and in answer to the Complaint filed in the above-entitled proceedings respectfully represents:

1. For the purpose of this suit the Commission admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the Complaint.

2. The Commission denies the allegations of paragraph 22 of the complaint insofar as they are inconsistent with the findings of the Commission set forth in its reports and orders of July 31, 1941, and December 1, 1941, annexed to said Complaint as Appendices B and C thereof, respectively, and otherwise denies the materiality of the allegations of said paragraph.

3. The Commission denies each and every allegation contained in paragraph 23 of the Complaint.

4. Further answering the allegations of the Complaint, the Commission alleges that in the proceedings in which [fol. 330] the aforesaid reports and orders were made and entered, the parties thereto, including the plaintiffs herein, were and each of them was accorded the full hearing provided by the Interstate Commerce Act; that in said hearing a large volume of testimony and other evidence bearing upon the matters covered by said reports and orders was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiffs by their counsel; that in briefs filed in said proceedings and in oral argument questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, including questions raised by plaintiffs in this suit, and the Commission determined said matters and

entered and served upon plaintiffs and other interested parties its reports and orders; that said reports and orders include the Commission's findings of fact, conclusions and requirements in the premises, and that upon the evidence aforesaid the Commission made the findings and stated the conclusions upon which said orders are based.

The Commission further alleges that the findings and conclusions in said report support the order here in question and that said findings and conclusions were and are and each of them was and is fully supported and justified by the evidence adduced in said proceedings.

The Commission further alleges that in making said orders it considered and weighed carefully each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings and their respective counsel, including matters covered by the allegations of the Complaint herein.

The Commission further alleges that said orders were not made or entered by it either arbitrarily or unjustly [fol. 331] or contrary to the relevant evidence or without evidence to support them; that in making said orders the Commission did not exceed its authority and the Commission denies each and all the allegations to the contrary contained in said Complaint.

Except as herein expressly admitted the Commission denies each and all of the allegations contained in the Complaint insofar as they conflict with the allegations herein or with the statements, findings, determinations or conclusions of fact included in the aforesaid reports of July 31, 1941, and December 1, 1941, attached to said Complaint as Appendices B and D thereof, respectively, which said reports together with the orders issued therewith are hereby referred to and made part of this answer.

All of which matters and things the Commission is ready to aver, maintain and prove.

Wherefore, the Complaint herein should be dismissed.

Interstate Commerce Commission, by Daniel H. Kunkel, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fols. 332-333] *Duly sworn to by Walter M. W. Splawn. Jurat omitted in printing.*

[fol. 334] In District Court of the United States

Civil Action. No. 3714

[Title omitted]

Answer of the United States of America—Filed February 5, 1942

Comes now the United States of America, by its counsel, and for answer to the complaint herein says that the United States admits the allegations of Paragraphs 1 to 21, inclusive, of the complaint.

For Further Answer to the remaining portions of the complaint the United States makes the following statements and representations:

1. This is an action against the United States to set aside an order of the Interstate Commerce Commission instituted pursuant to the provisions of 28 U. S. C. 41 (28), 45 and 46.

2. Under the provisions of 28 U. S. C. 45(a) the Attorney General has charge and control of the interests of the Government in this action. This section, however, does not impose upon the Attorney General the duty of defending the Commission's order in all cases, nor confer authority on him to dispose of or discontinue such an action as this over the objection of other parties; and it is expressly provided in such section that such other parties [fol. 335] may prosecute, defend, or continue the proceeding unaffected by the action or nonaction of the Attorney General herein.

3. Under the provisions of Section 201 of the Agricultural Adjustment Act of 1938, 7 U. S. C. 1291, the Secretary of Agriculture was authorized to intervene, and did intervene, in the proceeding before the Interstate Commerce Commission; and he is further given the rights of a party before the Commission to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. Pursuant to said section and to 28 U. S. C. 45(a), the Secretary of Agriculture has served notice of intervention as a plaintiff in this action and has applied for leave to file a complaint. As a plaintiff, the Secretary

of Agriculture challenges the validity of the order of the Interstate Commerce Commission and prays that it be set aside.

4. The Interstate Commerce Commission has been joined as a party defendant, has answered the complaint by asserting the validity of its order, and will be represented at the hearing by its own attorneys.

5. For the Attorney General to defend the order of the Interstate Commerce Commission would require him to assert a position on behalf of the United States which is attacked by the head of a coordinate branch of the Executive Department of the Government, and possibly to assume, at some stage of this proceeding, the position of advocate for both sides of the controversy.

6. Under the circumstances recited, and in view of the adequate representation of the interests of the United [fol. 336] States in this case, wherever they may lie, the allegations of Paragraphs 22 and 23 of the complaint are neither admitted nor denied.

Frank Coleman, Smith R. Brittingham, Jr., Special Assistants to the Attorney General, Counsel for the United States.

Thurman Arnold, Assistant Attorney General. J. Albert Woll, United States Attorney.

[fols. 337-339] I certify that a copy of the foregoing answer was this day mailed to the following persons:

Nuel Belnap, Esq., Walter Burchmore and Belnap, 2106 Field Building, Chicago, Illinois, Counsel for plaintiff.

Daniel H. Kunkel, Esq., Attorney, Interstate Commerce Commission, Washington, D. C., Counsel for Interstate Commerce Commission.

Mastin C. White, Esq., Solicitor, U. S. Department of Agriculture, Washington, D. C., Counsel for Intervening Plaintiff, Secretary of Agriculture.

Frank H. Cole, Jr., and Erich W. Lademann, Esqs., Attorneys, Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois.

Leo P. Day, Esq., Attorney, New York Central Railroad Company, Chicago, Illinois.

Horace L. Walker, and Bryce L. Hamilton, Esqs., Attorneys, New York, Chicago and St. Louis Railroad Com-

pany, 1400 First National Bank Building, Chicago, Illinois.

Theodore Schmidt and George F. Dyche, Esqs., Attorneys, Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois.

Horace L. Walker and William G. Wise, Esqs., Attorneys, Chesapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois.

Counsel for the Several Railroad Defendants.

S. R. Brittingham, Jr. Special Assistant to the Attorney General.

February 2, 1942.

[fol. 340] In District Court of the United States

Civil Action File. No. 3714

[Title omitted]

Answer of the Baltimore and Ohio Railroad Company, the New York Central Railroad Company, the New York, Chicago and St. Louis Railroad Company, the Pennsylvania Railroad Company, the Chesapeake and Ohio Railway Company.—Filed January 6, 1942

Now come the Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, and the Chesapeake and Ohio Railway Company, by their respective attorneys, and file this their joint and several answer to the complaint herein, and say:

First Defense

The assailed order of the Interstate Commerce Commission is not the character of order which this Court is authorized to enjoin or set aside, and this Court lacks jurisdiction over the subject matter in that regard.

Second Defense

This Court has no jurisdiction to enjoin these defendants, or any of them, from making effective or enforcing any change or changes in their schedules of rates for the [fol. 341] transportation of property by rail in interstate commerce.

Third Defense

Plaintiffs do not have the interest or standing requisite to enable them, or any of them, to bring and maintain this suit.

Fourth Defense

The complaint fails to state a claim against these defendants, or any of them, upon which relief can be granted by this Court.

Fifth Defense

1. These defendants, in answer to paragraph 1 of said complaint, deny the allegations of the last sentence therein.

2. These defendants admit the allegations of paragraphs 2, 3, 4, 5, 6, 15, 16, 17, 18, 19, 20 and 21 of said complaint.

3. These defendants, in answer to paragraph 7 of said complaint, allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein.

4. These defendants, in answer to paragraphs 8, 10, 11, 12, 13 and 14 of said complaint, admit that they are corporations as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

5. These defendants, in answer to paragraph 22 of said complaint, deny the allegations of the first, sixth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth sentences therein; and allege that they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in the remaining sentences therein.

[fols. 342-343] 6. These defendants, in answer to paragraph 23 of said complaint, deny each and every allegation therein.

7. Further answering, these defendants deny each and every allegation of said complaint not herein specifically admitted or otherwise specifically answered; deny that plaintiffs are entitled to the relief prayed for in said complaint, or any part thereof, or any relief whatsoever.

Wherefore, these defendants pray that they, and each of them, be dismissed as defendants in this cause, that said

complaint be dismissed, and that they have and recover their costs.

Frank H. Cole, Jr., Erich W. Lademann, Attorneys for The Baltimore and Ohio Railroad Company, Grand Central Station, Chicago, Illinois, Horace L. Walker, Bryce L. Hamilton, Attorneys for The New York, Chicago and St. Louis Railroad Company, 1400 First National Bank Building, Chicago, Illinois, Leo P. Day, Attorney for The New York Central Railroad Company, LaSalle Street Station, Chicago, Illinois, Theodore Schmidt, George F. Dyche, Attorneys for The Pennsylvania Railroad Company, Union Station Building, Chicago, Illinois, Horace L. Walker, William G. Wise, Attorneys for The Chesapeake and Ohio Railway Company, 69 West Washington Street, Chicago, Illinois.

Receipt is hereby acknowledged of a copy of the foregoing answer this 6th day of January, A. D. 1942.

Robert W. Burchmore, Nuel D. Belnap, Attorneys for Plaintiffs.

[fol. 344] In District Court of the United States

Civil Action File No. 3714

[Title omitted]

Petition of Intervention of the Secretary of Agriculture—Filed February 6, 1942

To the Honorable the Judges of Said Court:

The Secretary of Agriculture of the United States moves for leave to intervene as a plaintiff in this action, in order to assert the grounds of complaint set forth in his proposed complaint, a copy of which is attached, pursuant to [fol. 345] the authority contained in Section 201 of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 36; 7 U. S. C. 1940 ed. 1291), and Section 212 of the Judicial Code (36 Stat. 1150; 28 U. S. C. 1940 ed. 45a).

Mastin G. White, Solicitor, United States Department of Agriculture, Washington, D. C.

Haskell Donoho, Of Counsel.

Certificate of Service

I hereby certify that I, this day, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Washington, D. C., this 23d day of January, 1942.

Haskell Donoho, Senior Attorney, United States Department of Agriculture, Washington, D. C.

[fol. 346] In District Court of the United States

Civil Action. File No. 3714

[Title omitted]

Complaint

1. The Secretary of Agriculture of the United States, intervening plaintiff, adopts by reference the complaint of the original plaintiffs, Cargill, Incorporated, Norris Grain [fol. 347] Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, and Continental Grain Company, with the exception of paragraph 22 thereof, and by way of further complaint states:

2. The Secretary is a party in the case captioned Grain Proportionals, Ex-Barge to Official Territory, Investigation and Suspension Docket No. 4718, which culminated in the order of the Commission of December 1, 1941.

3. If the order of the Commission, mentioned above, becomes effective and the defendant carriers make the changes in rates and charges authorized thereby, the interests of grain producers now enjoying barge transportation into Chicago will be adversely affected.

4. If the order, referred to above, becomes effective, there will be effected, to the extent of the territory involved, a nullification of a consistent national policy to further the improvement of inland waterways in order to provide economical transportation.

5. If the order, referred to above, becomes effective, it will result in the shifting of grain from barges to the rail-

roads during a period of national crisis when there is every reason to believe that railroad facilities will be taxed to the utmost.

6. The action of the Interstate Commerce Commission in the order, referred to above, is, in practical effect, an attempt to bring about a cartelization of barge and rail transportation, which, if consummated, would destroy competition between these two means of transportation.

[fols. 348-350] 7. The order of the Interstate Commerce Commission, referred to above, is unlawful and void and beyond the power of the Commission to make in that the Commission erred in failing to reexamine, in the light of the provisions of Section 303(b) of the Transportation Act of 1940, its old decisions which indicated that the Commission should not permit the use of rail proportionals and reshipping grain rates east of Chicago on water-borne shipments reaching Chicago via carriers which had not filed tariffs with the Interstate Commerce Commission or some other appropriate regulatory agency.

Wherefore, intervening plaintiff prays:

(a) That a preliminary injunction be entered enjoining and setting aside the operation and effect of the said order of the Commission of December 1, 1941, until the final determination of this cause, and that, upon the final hearing herein, a decree be entered perpetually enjoining and setting aside the operation and effect of said order;

(b) That a preliminary injunction be entered enjoining and prohibiting the carrier defendants from making effective and enforcing the change in their tariffs and schedules of rates approved as lawful by the Commission in said order;

(c) That intervening plaintiff have such other and further relief in the premises as the nature of the case shall require and to this Court shall seem proper.

Respectfully submitted, Mastin G. White, Solicitor, United States Department of Agriculture, Washington, D. C.

By direction of the Secretary.
Haskell Donoho, Of Couns

[fol. 351] In District Court of the United States

Civil Action File. No. 3714

[Title omitted]

Petition of Intervention and Answer—Filed February 6, 1942

To the Honorable the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now come The Alton Railroad Company, a corporation under the laws of the State of Illinois, The Atchison, Topeka and Santa Fe Railway Company, a corporation under the laws of the State of Kansas, Chicago, Burlington & Quincy Railroad Company, a corporation under the laws of the State of Illinois, Charles M. Thomson, Trustee of Chicago & North Western Railway Company by virtue of an order entered by this Court in a proceeding pending therein, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by virtue of an order entered by this Court in a proceeding pending therein, Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company by virtue of an order entered by this Court in a proceeding pending therein, and Illinois Central Rail-[fol. 351a] road Company, a corporation under the laws of the State of Illinois, hereinafter referred to collectively as interveners, and move the Court for leave to intervene in the above-entitled cause, and to become parties thereto in order to protect their rights.

Each of the railroad corporations, parties to this petition, and each of the petitioning trustees at all times since the respective dates of their appointments as such, were and now are common carriers for hire engaged in the transportation of persons and property by rail in state, interstate and foreign commerce, and were and now are engaged in the operation of a line or lines of railroad within the State of Illinois among other States, and in particular between Chicago, Illinois, and western points, including other points in Illinois. Interveners are parties in interest to the proceeding before the Interstate Commerce Commis-

sion in which the order herein complained of was made and were parties to and participated in said proceeding. They desire to intervene in this cause in behalf of the defendants, to answer the amended complaint herein, and to participate in the trial of said amended complaint as parties defendants.

The joint and several answer of interveners to plaintiffs' amended complaint is as follows:

I

Interveners, in answer to Paragraph 1 in plaintiffs' complaint, deny the allegations of the last sentence therein.

II

Interveners admit the allegations of Paragraphs 2, 3, 4, 5, 6, 15, 16, 17, 18, 19, 20 and 21 in plaintiffs' complaint.

[fol. 351b]

III

Interveners, in answer to Paragraph 7 in plaintiffs' complaint, allege they are without knowledge or information sufficient to form a belief as to the truth of the averments set forth therein.

IV

Interveners, in answer to Paragraphs 8, 10, 11, 12, 13 and 14 in plaintiffs' complaint, admit that the said defendants mentioned in said paragraphs are corporations as alleged, and that they operate lines of railroad as common carriers engaged in interstate commerce.

V

Interveners, in answer to Paragraph 22 in plaintiffs' complaint, deny the allegations of the first, sixth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth sentences therein; and allege that they are without knowledge or information sufficint to form a belief as to the truth of the averments set forth in the remaining sentences therein.

VI

Interveners, in answer to Paragraph 23 in plaintiffs' complaint, deny each and every allegation therein.

VII

Interveners, in answer to Paragraph 3 in plaintiffs' amended complaint, deny each and every allegation therein.

VIII

Further answering, interveners say:

1. That the assailed order of the Interstate Commerce Commission is not the character of order which this Court [fol. 352] is authorized to enjoin or set aside, and this Court lacks jurisdiction to enjoin or set aside said order.

2. That this Court has no jurisdiction to enjoin the carriers made defendants herein by the plaintiffs, or any one of said carriers, from making effective or enforcing any change or changes in their schedules of rates and charges for the transportation of persons or property by rail in interstate commerce.

3. That plaintiffs do not have the interest or standing requisite to enable them, or any of them, to bring and maintain this suit.

4. That the amended complaint fails to state any cause of action or valid claim against the parties made defendants by plaintiffs, or any of said defendants, upon which the relief prayed for can be granted by this Court.

5. That in the proceeding before the Interstate Commerce Commission, in which the order herein assailed was entered, plaintiffs were accorded the full hearing provided for in and by the Interstate Commerce Act; that at the hearing or hearings on the issues before the Interstate Commerce Commission a large volume of testimony and other evidence was submitted by plaintiffs and others to the Interstate Commerce Commission for consideration; that in briefs filed in said proceeding and in oral argument questions relating to said issues were fully argued in behalf of the parties by their respective counsel and were submitted to the Interstate Commerce Commission for determination; that the Interstate Commerce Commission determined the questions relating to said issues and entered its order here sought to be enjoined and set aside; that the evidence before the Interstate Commerce Commission supports the said order; and that in entering the said order the Inter-

state Commerce Commission exercised the jurisdiction and power conferred upon it by the Interstate Commerce Act in a just and lawful manner.

[fol. 353] Wherefore, having fully answered, interveners pray that the relief sought by the amended complaint be denied and that the amended complaint be dismissed.

The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, Chicago, Burlington & Quincy Railroad Company, Charles M. Thomson, Trustee of Chicago & North Western Railway Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of The Chicago, Rock Island and Pacific Railway Company, and Illinois Central Railroad Company, by A. B. Enoch, Their Attorney.

Address Room 1025, La Salle St. Station, Chicago.

[fols. 354-358] State of Illinois,
County of Cook, ss:

A. B. Enoch, being first duly sworn, deposes and says that he is the attorney representing the parties designated as interveners in the above-entitled cause and makes this affidavit in their behalf; that he has read the foregoing petition of intervention and knows the contents thereof; that the same is true to the best of his knowledge and belief.

A. B. Enoch.

Subscribed and sworn to before me this 2nd day of January, A. D. 1942. —— ——, Notary Public.

[fols. 359-360] In District Court of the United States

Civil Action File No. 3714

[Title omitted]

Order—January 16, 1942

This cause was heard on plaintiffs' motion for an order dropping Robert E. Woodruff and John A. Hadden, Trus-

tees, as parties defendant and directing plaintiffs to summon Erie Railroad Company as an additional defendant herein, the affected parties having stipulated thereto, and the court being fully advised in the premises,

It is Ordered that Robert E. Woodruff and John A. Hadden, Trustees, be dropped as parties defendant and that plaintiffs be, and they are hereby, directed to summon Erie Railroad Company as an additional defendant in this action and to serve as amended complaint.

Charles E. Woodward, United States District Judge.

Dated: January 16th, 1942.

[fols. 361-362] In District Court of the United States

Civil Action File No. 3725

Civil Action File No. 3714

Order—February 6, 1942

These causes were heard on motion to consolidate them, and it appearing that the above-entitled actions involve common questions of law and of fact and that the consolidation thereof will tend to reduce unnecessary expense and delay, and the court being fully advised,

It is Ordered that the above-entitled actions be, and they are hereby, consolidated.

Evan A. Evans, U. S. Circuit Judge. Charles E. Woodward, U. S. District Judge. William H. Holly, U. S. District Judge.

February 6, 1942.

[fols. 363-364] In District Court of the United States

No. 3725, No. 3714 Consolidated

[Title omitted]

Order—Febraury 6, 1942

On motion of the United States Secretary of Agriculture it is

Ordered that leave be and the same is hereby given to file intervening petition and Ordered that Proposed complaints be made a part of Record.

[fols. 365-366] IN DISTRICT COURT OF THE UNITED STATES

No. 3725, No. 3714 Consolidated

[Title omitted]

ORDER—February 6, 1942

On motion of the Attorney General it is

Ordered that leave be and the same is hereby given to file his answer in the above entitled cause.

[fols. 367-372] IN DISTRICT COURT OF THE UNITED STATES

No. 3725, No. 3714 Consolidated

[Title omitted]

ORDER—February 6, 1942

On motion of attorneys The Alton Railroad Company, it is

Ordered that leave be and the same is hereby given to file reply brief.

[fol. 373] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. I. & S. 4718

Grain Proportionals Ex-Barge to Official Territory

Morrison Hotel,
Chicago, Illinois,
Tuesday, December 19, 1939.

Met, pursuant to notice, at 10:00 o'clock A. M.

Before R. G. Taylor, Examiner

APPEARANCES:

George Dyche, Leo P. Day and F. H. Cole, Jr., 1315 Union Central Building, Cincinnati, Ohio, appearing for respondents.

Nuel D. Belnap, John S. Burchmore and Robert N. Burchmore, 2106 Field Building, Chicago, appearing for Continental Grain Company, Stratton Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, Norris Grain Company, Edward R. Bacon Grain Co., Cargill, Incorporated, and B. A. Eckhart Milling Co., protestants.

David F. Root, Morris, Illinois, appearing for Co-operative Allied Grain Corporation, Morris, Illinois, protestant.

C. E. Childe, 924 W. O. W. Building, Omaha, Nebraska, appearing for Mississippi Valley Association, protestant.

G. W. Baxter, 608 South Dearborn Street, Chicago, ap-
[fol. 374] pearing for Illinois Agricultural Association, protestant.

W. G. Oliphant, and Nuel D. Belnap, 2106 Field Building, Chicago, Illinois, appearing for Inland Waterways Corporation, operating the Federal Barge Lines, protestants.

Charles S. Macaulay, 1534 North Dearborn St., Chicago, Ill., appearing for Finnegan Grain Corporation, Morris, Illinois, protestant.

A. B. Enoch, Chicago, Illinois, appearing for Western Carriers (In support of proposals).

Fred C. Furry, 135 East 11th Place, Chicago, Illinois, appearing for Illinois Central Railroad (In Support of proposals.)

J. E. Flansburg, General Commerce Agent, 400 West Madison Street, Chicago, Illinois, appearing for Chicago & North Western Railway Co., (Charles M. Thomson, Trustee.) (In support of proposals.)

R. M. Hegberg, 80 East Jackson Boulevard, Chicago, Illinois, appearing for A. T. & S. F. Ry. Co. (In support of proposals.)

Henry Christianson, 547 West Jackson Boulevard, Chicago, for the Chicago, Burlington & Quincy Railroad Company, (in support of proposals.)

W. H. Blair, Peoria, Illinois, appearing for Toledo, Peoria & Western Railroad, (in support of proposals).

F. W. Maronn, Commerce Assistant, 765 Union Station, Chicago, appearing for Chicago, Milwaukee, St. Paul &
[fol. 375] Pacific Railroad Company (Henry A. Scandrett, Walter J. Cummings, George I. Haight, Trustees). (In support of proposals.)

Bernard L. Glover, 411 Fairfax Building, 101 West 11th

Street, Kansas City, Missouri, appearing for the W. J. Small Company. (In support of proposals.)

J. S. Brown, and S. H. Benson, 671 Board of Trade, Chicago, Illinois, appearing for Board of Trade of the City of Chicago.

Freeman Bradford, 623 Board of Trade Building, Indianapolis, Indiana, appearing for Indianapolis Board of Trade.

Arthur L. Schier, 250 Park Avenue, New York City, appearing for General Foods Corporation, Corn Mill Division, Kankakee, Illinois.

W. V. Wheat, Peoria, Illinois, appearing for Peoria Board of Trade.

William T. McArthur, 1212 Board of Trade Building, Kansas City, Missouri, appearing for The Kansas-Missouri River Mills.

Edwin T. Breen, First Assistant Attorney General of Illinois, and Ben Schwartz, Assistant Attorney General, on behalf of John E. Cassidy, Attorney General of the State of Illinois, all appearing as observers.

E. B. Smith, and Y. H. Sparrow, room 1900, 208 South LaSalle Street, Chicago, Illinois, appearing for General Mills, Incorporated.

[fols. 376-377] C. L. Bruno, Decatur, Illinois, appearing for Spencer Kellog & Sons, Inc.

George R. Watson, 600 Roanoke Building, Minneapolis, Minnesota, appearing for Archer Daniels Midland Co.

T. C. Burwell, Decatur, Illinois, appearing for A. E. Staley Manufacturing Co.

H. H. Heftes, 141 West Jackson Boulevard, appearing for Rosenbaum Brothers.

M. Joseph Kaufman, 141 West Jackson Boulevard, Chicago, appearing for Santa Fe Elevator Corporation.

John J. Coffman, Jr., 135 South LaSalle Street, Chicago, Illinois, appearing for Cargill Incorporated.

R. L. Holmes, 309 West Jackson Boulevard, Chicago, Illinois, appearing for Standard Milling Co.

J. J. Schimmel, 332 South LaSalle Street, Chicago, Illinois, appearing for Continental Grain Co.

L. W. Cole, 1463 Railway Exchange Building, St. Louis, Missouri, appearing for Wabash Railway Co.

W. R. McDonald, 160 North LaSalle Street, Chicago, Illinois, appearing for Illinois Commerce Commission.

[fol. 378] Proceedings

Exam. Taylor: Come to order, gentlemen. The Interstate Commerce Commission has set for hearing at this time and place Investigation & Suspension Docket No. 4718, Grain Proportionals Ex-barge to Official territory.

Who appears for respondents?

Mr. Cole: Mr. George Dyche, Leo P. Day and F. H. Cole, Jr. They are all present here.

Exam. Taylor: For protestants?

Mr. Belnap: Nuel D. Belnap for the Continental Grain Company, Stratton Grain Company, Rosenbaum Brothers, Santa Fe Elevator Corporation, Morris Grain Company, Edward R. Bacon Grain Co., Cargill, Incorporated, and B. A. Eckhart Milling Co., protestants.

Mr. Root: David F. Root, for Co-operative Allied Grain Dealers Corporation.

Mr. Childe: C. E. Childe for the Mississippi Valley Association.

Mr. Baxter: G. W. Baxter, Illinois Agricultural Association.

Mr. Oliphant: Nuel D. Belnap and W. G. Oliphant, appearing for the Inland Waterways Corporation operating the Federal Barge Lines; 2106 Field Building, Chicago, Illinois.

Mr. McCaulay: Charles S. Macaulay, appearing for Finnegan Grain Corporation of Morris, Illinois. And may [fol. 379] I enter the tentative appearance of an attorney who is unable to be here but who will attend the other sessions. Mr. Thomas Dunne of Morris, Illinois.

Exam. Taylor: Show Mr. Dunne is not present. Are those all the appearances for respondents? (No response.) We will have the carriers in support of the proposals.

Mr. Enoch: A. B. Enoch, for the Western Carriers.

Mr. Furry: Fred C. Furry, for the Illinois Central Railroad.

Mr. Flansburg: J. E. Flansburg for the Chicago & North Western Railway.

Mr. Hegberg: R. M. Hegberg, A. T. & S. F. Railway.

Mr. Christianson: Henry Christianson, 547 West Jackson Boulevard, Chicago for the Chicago, Burlington & Quincy Railroad Company.

Mr. Blair: W. H. Blair, Toledo, Peoria & Western Railroad.

Mr. Maronn: F. W. Maronn, 765 Union Station, Chicago, for the Chicago, Wilwaukee, St. Paul & Pacific, Trustees.

Exam. Taylor: Is that all the appearances for carriers in support of the proposals? (No response.) Now, the parties in favor of the proposals, other parties.

Mr. Glover: As I understand, the proposals don't affect our rates by the changes proposed, so we are kind of neutral in the matter as we understand it.

[fol. 380] Mr. Brown: J. S. Brown and S. H. Benson, for Chicago Board of Trade.

Mr. Bradford: Freeman Bradford, for the Indianapolis Board of Trade.

Mr. Schier: Arthur L. Schier, General Foods Corporation—Corn Mill Division, Kankakee, Illinois.

Mr. Wheat: W. V. Wheat, Peoria Board of Trade, Peoria, Illinois.

Mr. McArthur: William T. McArthur, Kansas-Missouri River Mills, Kansas City, Missouri.

Exam. Taylor: Is that all the appearances for parties other than carriers in favor of the proposal? (No response.)

Mr. McDonald: F. B. McElroy, Illinois Commerce Commission.

Exam. Taylor: Mr. McElroy not present. His appearance was entered for him. Respondents may call their first witness.

Off the record.

(Discussion outside the record.)

(Exhibits 1 to 12, Witness Tannehill, marked for identification.)

W. T. Tannehill, was sworn and testified as follows:

Direct examination.

By Mr. Cole:

Q. Mr. Tannehill, you have been sworn?

A. Yes, sir.

Q. Will you please give your name to the reporter?

[fol. 381] A. W. T. Tannehill.

Q. Will you please state your connections and whom you represent here?

A. Member of the Auxiliary Committee of the Central Freight Association; here representing the respondent carriers.

Q. Will you please give your traffic connections and your qualifications?

A. I have been in railroad work since 1936; operating in traffic. 31 years with the New York Central System, in the operating traffic department of various capacities, including general freight agency at Chicago; chief tariff bureau; assistant to the traffic manager at New York. I have been in my present location since March 1, 1937.

Q. Have you made a study of the issues involved in connection with this I. & S. Docket 4718?

A. I have.

Q. And have you prepared or has there been prepared under your direct supervision and control a set of exhibits which we have already distributed, numbered 1 to 12, inclusive?

A. That is correct.

Q. Do these exhibits set forth the facts as you have checked them and are they true and correct to the best of your knowledge and belief?

A. Yes, sir.

Q. Have you prepared in connection with your exhibits a [fol. 382] statement showing the position of the respondents in connection with this proposed tariff change?

A. Yes.

Q. Will you please proceed to explain this situation to the Commission, please?

A. This proceedings involves a desire of the rail carriers operating in and from Illinois to restrict the application of proportional or reshipping rates on grain, grain products, and so forth, so as to be non-applicable to traffic moving into Chicago or other points, via barge, for various reasons among which are: the loss of tonnage to the rail carriers; the serious disturbance the present situation is having upon the grain rate structure in the territory generally; the discrimination and undue prejudice and preference as against rail shippers of grain in the origin territory in Illinois.

Exhibit No. 1 consists of 27 pages and I would like to make a correction in each one of the exhibits distributed. Page 18½ was inserted. Page 18½ follows the first block on Page 19. It is a chronological application of the note

which became effective January 15, 1924, that was left out of the original.

This exhibit is a chronological statement showing the various applications of the proportional rates from Chicago, and so forth, to Central Freight Association territory, Trunk Line and New England Freight Association terri-
[fol. 383] tories from the year 1910 to date. In the early days, starting with 1910, the rules were published in individual tariffs. We did not try to reproduce all of the tariffs and we have shown the tariffs of the L. S. & M. S. Railroad, now the New York Central, because they were available and handy to get at. That is the only reason for showing those particular tariffs. But the other tariffs were published in a like manner.

There is one other correction—well, one correction that has been made on Page 6 of the exhibit. In the second block, there is a line drawn through eight words there, and I simply explain that we had these photostated and there is not a copy of the particular item that we could use to cut up for this photostat, and therefore drew the line through the words that have been deleted, thus making it the same as it was on June 28, 1935.

The first nine pages of Exhibit 1 involve the application of the rates as affecting Central Freight Association territory. The balance of the exhibit involves the application of the rates to Trunk Line and New England territory. On Page 14 of the exhibit, under note 25, attention is called that his note 25 is not applicable at Chicago, but only from upper Mississippi River crossings, St. Louis, East St. Louis and Peoria. And Page 16, Note- 30 and 35, have application only via the Peoria and Pekin gateways. A similar note should be provided on Page 20 in connection with Notes 25, 35 and 40.

[fol. 384] Q. Mr. Tannehill, will you please explain Note 17—Note 40, Page 17.

A. Note 40 on Page 17 has application at Peoria.

Exhibit No. 2 is a photostatic copy of the present and suspended notes in Agent Jones' Tariff 535-A, ICC 3300; the first six and a half pages being the notes as are applicable today. The balance of the exhibit covers the suspended notes.

Exhibit No. 3 is a map showing the territory in Illinois and Northwestern Indiana, which is outlined in a heavy

black line as representing the territory from which reduced rates on corn, carloads, were published to Chicago to meet water and truck-water competition.

Exhibit No. 4 is a companion to Exhibit No. 3 and shows the origins within the heavy black circle of Exhibit 3, and sets forth the intrastate rates on corn, carloads, published to meet water and truck-water competition to Chicago as compared with the normal local rates on grain, including corn, from the same origins to Chicago. The reduced rates from these origin points are applicable only on Illinois state traffic, except those rates on Page 3 for account of the EJ&E, and on Page 4, for account of the New York Central System, which rates are interstate—for interstate application, because the routes of those lines to Chicago operate through Indiana and the application of their rates necessarily is interstate. But on these lower rates by interstate route, transit is not permitted under the reduced [fol. 385] rates.

Exhibit No. 5 is a two-page statement showing the present total charge on grain, barge-rail from La Salle, Morris, Ottawa and Seneca, Illinois using the rail proportional rate out of Chicago to Baltimore, Maryland; New York, New York; and Boston, Massachusetts. Those figures are shown in the first block of the exhibit and cover both domestic and export grain.

In the succeeding blocks, as an example, using the domestic rate to Baltimore, the barge-rail total charged today is 27⅛ cents, as compared to 35 cents all-rail from La Salle, 32½ from Morris, 33 from Ottawa and 32½ from Seneca. The local rate from Chicago to Baltimore is 31½ cents and is higher than the combination of the barge rate to Chicago and the proportional rate east thereof, and we also show in that exhibit the mileage from River ports of La Salle, Morris, Ottawa and Seneca, together with the mileage from the points, for example, on the B. & O. Railroad of Avilla, Indiana, where the local rate on grain to Baltimore meets the barge-rail charge from La Salle, Ottawa, Morris and Seneca.

The succeeding blocks on that exhibit cover the Erie Railroad and the Grand Trunk and Michigan Central; second page, other roads as explained.

On Exhibit No. 6, the companion to Exhibit 5——

Q. Mr. Tannehill, pardon me just a minute. Will you explain, please, the asterisks that show on Exhibit No. 5?

[fol. 386] A. The asterisks that are shown opposite certain rates on Exhibit No. 5 are the points where the local rate from the Indiana or Ohio origins to Baltimore or New York or Boston become equal to the barge-rail charge from the Illinois River landings, La Salle, Morris, Ottawa and Seneca. In other words, the barge-rail charge from these four points is lower than the rates published for all-rail application from the Indiana origin as shown, and on the domestic, as stated, it runs out of Avilla, Indiana, on the B. & O. and on domestic traffic. On export traffic other than the coarse grains, it runs out of Hicksville, Ohio and on the coarse grains including corn for export, it doesn't run out until it reaches Lordstown, 393 miles from Baltimore.

Q. While you are still on that exhibit, Mr. Tannehill, will you note over on the left side of the page at the top, there is shown two columns under the word "Miles." That first column headed "All Rail," is that the short-line rail distance?

A. That is the short-line class rate distance.

Q. And the second column with the (1) inside, what does that distance represent?

A. That distance represents the distance via Chicago, using the barge line mileage to Chicago. We used Federal Barge Line Circular 9-H, ICC 82—Illinois Waterway Navigation Chart published by the U. S. Engineering Office at Chicago.

By Exam. Taylor:

Q. And then beyond Chicago, you used——

[fol. 387] A. Beyond Chicago, we used the short-line class rate distance.

Exhibit No. 6 is a companion to Exhibit No. 5 and shows on that map where the local rates from country origins in Indiana, Michigan, Ohio, become not higher than the barge-rail charge from the Illinois River landings, Morris, Ottawa, Seneca, and La Salle. The first line is where the domestic rates become equal. The second line—the broken line following the Indiana-Ohio state line and running out just north of Port Huron, Michigan, is the export rates other than the coarse grains; and the chain line over near the Ohio-Pennsylvania state line is where the coarse grain,

including corn, meet the charge of the barge-rail movement from the Illinois River landings.

Exhibit No. 7 is a three-page exhibit using Toledo, Ohio and New York, New York, as examples as destinations, and Minneapolis, Minnesota, as representing Northwest territory; Kansas City, Missouri, as representing Trans-Mississippi territory as origins, and shows the chronological history of rates from March 15, 1910, to date, applicable from the Northwest via Chicago and Peoria, Illinois gateways, and from Kansas City via Chicago, Peoria and St. Louis gateways. This exhibit is presented to show that the proportional or reshipping rates from Chicago on grain have always been equalized via the other gateways, Peoria and St. Louis; St. Louis, of course, not being equalized from the Northwest. This is not alone because of railroad [fol. 388] competition, but also because of market competition, the only exception to this continued equalization being in certain instances where for a short time following straight percentage increases in rates, they were out of alignment. And following general order 28, which was the 25 per cent case, due to the fact that the railroads were under Federal control, the adjustment equalizing the gateways was not made until November 22, 1920.

The history of these rates has been discussed in several of the Commission's reports, including the third report of the Commission in the Southwestern Millers' League case, Docket 15037, 225 ICC 195, at Page 208, and there being no through rates on grain from the Northwest or Trans-Mississippi River territory these proportional rates on grain served as the Eastern roads' factors representing the through charge and were published to equalize the St. Louis, Peoria and Chicago gateways and markets, and there was no intention on the part of the carriers east of Chicago when this basis of rates was worked out that they apply on traffic reaching Chicago or other gateways by barge. It is true that certain of the proportional rates were made applicable on grain arriving at Chicago from Duluth and upper lake ports via the Great Lakes where the traffic had had a previous rail haul to the ports.

By Mr. Cole:

Q. Mr. Taylor, I notice that at the heading of this exhibit, you say that this is the rate history on wheat to show this

[fol. 389] equalization. Was wheat shown merely as illustrative?

A. Wheat was shown merely as illustrative.

Q. The same equalization would prevail, then, on all of the various grains?

A. On all of the grains, yes.

Exhibit No. 8 is a companion exhibit to Exhibit No. 7, showing how this equalization also works out from the country origin of the grain to the final destination. For Northwest territory in this exhibit we have used Andover, South Dakota and Duane, North Dakota. It will be noted that these rates equalize via both Chicago and Peoria, and in this exhibit we are using the rates as of today.

By Exam. Taylor:

Q. Included in the Ex Parte 123?

A. Yes, sir. And from the Trans-Mississippi territory we have used Harrison, Nebraska and Concordia, Kansas. Here it will be noted that the rates are also equalized.

Exhibit No. 9 is a four-page statement showing the all-rail rates on grain from La Salle, Ottawa, Morris and Seneca, Illinois to representative destinations in Central Freight Association territory, also to Baltimore, New York and Boston, compared with the barge-rail charges, which shows the level of the all-rail rates from these origins, LaSalle, Morris, Seneca and Ottawa to the destinations shown compared with the sum of the barge rates into Chi- [fol. 390] cago from the same origins, plus the proportional rate from Chicago to these same destinations, showing that the barge rate, plus the proportional rate, would give total charges ranging as much as 8 cents lower than the all-rail rate.

Exhibit No. 10 shows the various proportional or reshipping rates from Chicago and the local rates from Chicago to Central Freight Association destinations and their application. This exhibit, in so far as the application of the notes referred to are concerned, will be coupled with Exhibit No. 2. In other words, where we say under "Trans-Mississippi River (see Notes 20 and 50)" and under "North-West (see Note 40)", and "Reshipping (see Note 45)", those are all explained in Exhibit 2.

Exhibit No. 11 is a one-page statement showing the short-line distance and present local rates on grain, car-

loads, the present published sixth and first class rates and the percentage relationship the local grain rate is of the first class, Chicago to Central Freight Association, Trunk Line and New England destinations shown, also comparison of these rates with the Western and Southwestern scales for similar distances and the relationship of rates under the Western and Southwestern scale with the Appendix E Docket 15879 first class rate for the distance.

Exhibit No. 12 is a four-page statement prepared by the Ceneral Inspection and Weighing Bureau showing the [fol. 391] origin points of 792 cars of corn moving into Chicago from the territory covered by Exhibits Nos. 3 and 4 at the low water-compelled or truck-and-water-compelled rates, during the period May 1 to November 30, 1939, which were accorded milling in transit privileges and the product of this corn reforwarded to destinations east of Chicago via rail. The column headed "Local State Rate" represents the water-compelled or truck-water-compelled rate on which the traffic moved into Chicago and the next column headed "Normal Rate" represents the rate which had to be protected to Chicago when the traffic moved out of Chicago by rail. In the last column there is shown the number of cars from each of these origins.

Mr. Cole: I would like to offer in evidence at this time Exhibits 1 to 12, inclusive.

Exam. Taylor: They will be received.

(Exhibits 1 to 12, Witness Tannehill, received in evidence.)

Mr. Cole: That is the end of the direct.

Exam. Taylor: Any questions by counsel for carriers in support of the proposed rates?

Mr. Enoch: Yes, if your Honor please.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Mr. Tannehill, several times in your direct testimony and on one or more of your exhibits, reference was and is made to a barge rate. What did you have in mind when you referred to "barge rate"?

A. I had in mind the charges as given to us by a represen- [fol. 392] tative of the Chicago Board of Trade as the

charges of the barge lines to bring that grain traffic to Chicago.

Q. Were you able to find what you designate as a rate in any published document?

A. Oh, no, we had no other way of getting it than the manner I tell you.

Q. Do you mean Mr. Brown?

A. Mr. Brown.

Q. Did you get any of these figures which you have referred to as rates from any so-called manifests?

A. Yes, one or two.

Q. Do you know whether or not that figure is, in reality, simply a computation made by the shipper purporting to represent the cost of transportation?

A. I don't.

Q. When you use the word "barge rate," you don't refer to a rate such as we generally refer to in this, speaking about the all-rail rate from Chicago to Kansas City or Kansas City to New York?

A. I think, Mr. Enoch, that in all instances, if I referred to it as barget rate it should have been referred to as barge charge.

Q. And you have no way of verifying the accuracy of the computation of cost, if that is a computation of cost, have you?

A. Not that I know of.

[fol. 393] Q. And if it were a rate, you would have no way to verify whether or not it was a rate?

A. To the best of my knowledge, it is not published in any publication on file.

By Exam. Taylor:

Q. On file with the Interstate Commerce Commission?

A. Or state commission or anywhere else.

By Mr. Enoch:

Q. With anybody?

A. With anyone that I know of.

Q. Where do the Eastern lines accept these shipments of corn for transportation eastbound? Where in the Chicago switching district?

A. Well from the grain house.

Q. You mean the grain elevator?

A. Yes, sir.

Q. Are these shipments of corn all loaded at South Chicago out of those elevators out there?

A. I don't know what elevators they are loaded out of. I have no personal knowledge of what elevators they are loaded out of.

Q. All of the grain that is placed in the cars here in the Chicago district for transportation eastbound and which were permitted to engage these proportional rates out of Chicago was in storage in Chicago just before eastbound transportation by rail, was it not?

The Witness: Miss Reporter, would you please read the [fol. 394] question?

(Question read.)

The Witness: Well, the grain that was tranported east from Chicago was in Chicago, naturally, when it was loaded in the cars.

By Mr. Enoch:

Q. And loaded out of an elevator?

A. Loaded out of an elevator, or if it was a product, loaded out of a milling concern.

Q. What I wanted to make clear was this, Mr. Tannehill, that there was no—speaking of the facts and not of the fiction, now—that there was no continuity of movement, as far as you know, from these origin points, say Morris, Illinois, direct to New York, barge to Chicago and rail to New York?

A. What you mean, was it loaded direct from barge to cars?

Q. Yes.

A. I wouldn't know. Presumably, it all went through the elevators. How long it was there, of course I couldn't say.

Q. If all of it did go into the elevator in order—if it were otherwise proper to apply those proportional rates eastbound, there must have been some tariff provision permitting storage in transit or some other service of that nature in order to preserve this continuity of movement. Where in the tariffs of the Eastern lines would I find a provision which, as I say, if it were otherwise lawful, would permit this grain to accept storage at Chicago, hav- [fol. 395] ing some in ex-barge and moved out all-rail?

A. As shown in my Exhibits 1 and 2.

Q. What exhibits?

A. 1 and 2.

Q. 1 and 2?

A. Yes.

Q. Did you refer to any transit tariff there?

A. Well, of course the transit tariff applicable at Chicago for account of all lines is the Agent Jones' Tariff 413. I can't give you the ICC number.

Q. That is all right.

A. But so far as the application which I thought you had reference to, they are carried in Exhibits 1 and 2.

Q. Now, if the Commission should find that there is required a tariff provision authorizing storage in transit at Chicago, they would only find it or anyone would only find it in this Jones' Tariff, to which you just made reference?

A. Well, as far as I know, there is no other; so far as the rail carriers, and that its the only one I have had any——

Q. I am talking about the rail carriers; that is the only one I had in mind. I am right about that, am I? If I am looking for such provision, I would find it, if at all, in the Jones' tariff?

A. That is the tariff providing for the storage and the transit privileges on grain and grain products and various [fol. 396] other commodities in the Chicago district.

Q. I notice in your Exhibit No. 1 and 2 reference is made to Northwest territory, Trans-Mississippi territory and other similar descriptions for origin territory. Are the proportional rates from Chicago to the East which are applicable on grain from Northwest territory and Trans-Mississippi territory at the same level?

A. Not always. They are to Trunk Line and New England. They are not to Central territory where we recently got—complied with the Commission's decision in Docket 15037. We endeavored in the Southwest Millers' case to make them the same on all grain east of Chicago to CFA territory, but were not permitted to do so.

Q. What rate have the Eastern lines in applying on this corn from Morris, Illinois, ex-barge going to points in Central Freight Association territory, the ex-Northwest proportional or the Trans-Mississippi proportional?

A. Well, now, what rate they have been applying, I couldn't say. I have not applied any of the rates. The rules involving the application of those rates are as shown in Exhibits 1 and 2, and it has been interpreted that the

Northwest rate would apply to this water-borne traffic to Chicago.

Q. Where it is lower?

A. Where it is lower?

Q. Yes.

[fol. 397] A. Lower than what?

Q. Lower than the rate on Trans-Mississippi business to the same point.

A. No. No, sir.

Mr. Belnap: May I have the last question and answer here?

(Record read.)

Mr. Belnap: Clear up that last portion. I don't think the record is clear as to what the fact is.

The Witness: The answer is that the Northwest reshipping rate has been interpreted to apply in all instances.

By Mr. Enoch:

Q. Mr. Tannehill, will you identify a point in CFA territory to which, from Chicago, the proportional rate, ex-Northwest is lower than the proportional from Trans-Mississippi territory?

A. I seriously doubt if there is any unless they are in—yes, the Northwest had one at Cadillac, Michigan, 17 cents: and 17 Trans-Mississippi. That is no different.

Mr. Belnap: I can't hear the witness, Mr. Examiner.

Exam. Taylor: Will you talk a little louder, please?

By Mr. Belnap:

Q. What exhibit are you on?

A. I am not on any exhibit. The gentleman asked me if I could identify a rate from Trans-Mississippi higher than from the Northwest, and I am endeavoring to find one. Just for my own edification, I am using Exhibit 10.

Exam. Taylor: Does that clear that up, Mr. Enoch?

[fol. 398] Mr. Enoch: Pardon me?

Exam. Taylor: Does it clear that up for you?

Mr. Enoch: I didn't hear that.

Exam. Taylor: Does that answer your question?

Mr. Enoch: No, he is looking for a point——

The Witness: There are none shown on this exhibit where the Northwest is lower than Trans-Mississippi, and I have none in mind.

Mr. Enoch: That is all.

The Witness: I might explain that all of our Trans-Mississippi rates and our Northwest rates to CFA territory were set by the Interstate Commerce Commission in Docket 15037.

Exam. Taylor: Do you want to ask him some questions?

Mr. Cole: Off the record.

(Discussion outside the record.)

Exam. Taylor: Go ahead, Mr. Cole.

By Mr. Cole:

Q. Mr. Tannehill, will you look at your Exhibit No. 6, please. In the Docket 15037 case, do you remember that there was an exhibit introduced in that case upon which the rates were finally based with a line of equidistant points beginning at South of Chicago and running in a southeasterly direction east from that beginning point, and that there was a line drawn up above there including the very southernmost portion of the southern peninsula of Michigan, and that in the equalization of the rates from the [fol. 399] Northwest and from the Southwest, the Commission made the rates equalized through, for the through distance between these two lines; and that north of that line in the southern peninsula of Michigan, the rates were made lower ex-Northwest because of the closeness of that Northwest territory. Do you remember that exhibit?

A. Well, I remember that was the situation. I don't remember the exhibit.

Q. But the decision that you refer to will bring that out by reference to that line in southern Michigan to which territory south of that line, the rates were equalized from both of the origins, will it not?

A. I think so.

Q. Now, in the first part of Mr. Enoch's questioning, he referred to the barge charge. The figures that you have used throughout your exhibits as representing the barge charge, does that represent an average of those charges that you refer to. Does it represent the lowest barge charge

you referred to or does it represent the highest barge charge you learned of?

A. That was the figure that was given us by the Chicago Board of Trade as the charge that was being assessed. It had no average. That was the only figure that we secured.

Mr. Cole: That is all. Thank you.

Mr. Brown: Mr. Tannehill——

Exam. Taylor: Just a minute, Mr. Brown. I want to see if the carriers in support of the proposals have any fur-
[fol. 400] ther questions.

Mr. Enoch: I have none.

Exam. Taylor: All right, Mr. Brown.

By Mr. Brown:

Q. Mr. Tannehill, do you recall whether it was stated that this four and a half cent per one hundred alleged barge charge at Chicago was made up of two factors which were taken from the protests of the petitions of some of the protestants?

A. I do not, Mr. Brown. I simply used a figure that I got from you by telephone at that time. There were——

Exam. Taylor: A little louder, please, Mr. Tannehill.

The Witness: I said I do not recal- that that was the case. I simply used a figure that you gave me on the telephone as the basis for these charges.

By Mr. Brown:

Q. You don't recall now that I said that it included what was said to be a 1 cent per 100 pounds for elevation from barge to elevator at Chicago?

A. No, I do not. There was, I think, in one protest that was filed against these corrections in the tariff, there was some statement made but I do not remember what it was and whether it was against the tariff that was withdrawn or the one that is now under suspension; I don't recall.

By Mr. Day:

Q. Well, Mr. Tannehill, you have seen the manifests—if you will pardon me, Mr. Brown.

Mr. Brown: Yes, surely.

[fol. 401] By Mr. Day:

Q. You have seen the manifests on some of this grain and you know the charge shown there is 1.4 cents and 1.5 cents per bushel on some of it?

A. Some of it.

Q. That would be the equivalent of 2½ cents per 100 pounds, wouldn't it?

A. Yes, as far as that charge is concerned.

Q. There are 56 pounds to the bushel, grain is considered.

A. What we used here was simply the figure that Mr. Brown gave us.

Mr. Brown: Are you through, Mr. Day?

Mr. Day: Yes, Mr. Brown.

By Mr. Brown:

Q. Do you understand, Mr. Tannehill, that these barge bills of lading or receipts or whatever you may call them must be registered with the joint inspection bureau at Chicago that has jurisdiction over the transit operations and that that requirement is required under this Jones' tariff 413-K which you referred to?

A. Yes.

Q. For the record, I will give the ICC reference. It is ICC No. 3204, issued by B. T. Jones, Agent, for account of all railroads in the Chicago district.

Mr. Tannehill, would or would not these barge bills of lading that are registered with the bureau show whether or not there was a rate on there for the towing from these river [fol. 402] points downstate to Chicago?

A. I would think they would. Now, you are talking about a bill of lading. I don't know of any bill of lading that has been tendered to the Inspection Bureau. There might have been an outbound bill of lading but on the inbound, I think you are talking about the barge manifests.

Q. Would the barge manifests be representative of the inbound movement just like a railroad freight bill is representative of the inbound movement of the car?

A. I couldn't say whether it would be representative or not.

Q. Does it serve the same purpose?

A. It serves the same purpose for the Inspection Bureau.

Q. Are those available?

A. They are available, I presume, in the Inspection Bureau. I don't know just the workings of the Inspection Bureau. I saw one or two over there, but I would think they would be available.

Q. Is this Bureau under the supervision of the Central Freight Association?

A. Yes, sir, and at Chicago also under the supervision also of the western roads, because we have the one Bureau on the grain at Chicago.

Mr. Brown: Is there any objection, Mr. Cole, to an examination of some of these bills to see whether or not they show any rate or freight charges? We are talking about these barge manifests. That ought to be cleared up, just [fol. 403] what the towing rate is, if it is shown on the barge manifests. If it is not, of course on one knows what it is except the man who pays it.

Exam. Taylor: Can you answer that question, Mr. Cole? That question was addressed to you.

Mr. Cole: Was it?

Mr. Brown: Yes, sir. I asked you if you had any objection.

Mr. Cole: Pardon me, Mr. Brown. I was talking to Mr. Day about another point. I thought you were asking the witness.

Mr. Brown: No, I asked you if there was any objection on the part of the eastern respondents to making the examination of these barge manifests that are on file with the Inspection Bureau to determine whether or not there is any rate charged on those barge manifests for towing, the charge for towing or any other charge, or whether there is any rate at all on that.

Mr. Cole: Why, I don't see why we should have any objection to anybody showing any of the facts that they believe are pertinent to our issue that we have here. No, Mr. Brown.

Mr. Brown: The reason I raised that question——

Mr. Cole: But we don't have any manifests here with us and if anybody asks for the privilege of doing it, somebody will have to go over to the Central Weighing and Inspection Bureau, or else we will have to have a man from that Bureau come here, and since the Bureau is under the supervision and direction of the Central Freight Asso-

[fol. 404] ciation, I think it is an easy matter to clear up, unless Mr. Belnap states that his clients will show those barge bills of lading.

Mr. Belnap: We are going to put in, Mr. Brown, what we paid on the shipments transported for our account.

Mr. Brown: That is for the towing?

Mr. Belnap: Transportation; the transportation.

Mr. Cole: Mr. Examiner, perhaps I could clear up Mr. Brown's question satisfactorily to you if we were to agree this way, and if it satisfied everybody, that we could go ahead and proceed with the case now and if Mr. Brown, when he comes to his part of the case desires us to do so, we could probably have that man come over here after having made an investigation of these manifests to give what Mr. Brown wants of him when he comes; and if everybody is agreeable that that be done a little later, we could have that man here at that time. Mr. Brown could let us know a little later during the hearing, at a recess, say.

Exam. Taylor: May I ask, are you going to put a witness on the stand that is conversant with the handling of this grain through the transit operation here at Chicago?

Mr. Cole: Well, the railroads are not. And I think that Mr. Brown, through his activity, knows more about that than anybody in the room. So he would be the man who would be answering that very thing that you have just referred to.

Mr. Brown: I think Mr. Brown will not take the stand [fol. 405] and he will only have a commercial witness, maybe some farmers from downstate, but the eastern railroads have jurisdiction over this transit Bureau. They have access to all the records. They know what kind of barge bills have been recorded for transit. They know what has become of those bills. What I want to know is, do those barge bills show any rate for transportation, that is, for towing, Morris and Ottawa to Chicago. Then we can clear up whether this four and an eighth less one cent is the actual towing charge made.

Exam. Taylor: You said something, I think, Mr. Brown, about the western carriers in support of the tariffs here in issue, whether they were going to put in something, did you not?

Mr. Brown: I suppose, but they——

Exam. Taylor: Along that line?

Mr. Brown: But you see, they don't have anything to do with the transportation up to Chicago by barge. The eastern railroads are the only ones, who, as rail carriers, participate in this barge movement.

Mr. Enoch: If your Honor please, these manifests are absolutely essential to the eastern lines in order that the eastern lines may have some semblance of authority for assessing something less than the local rate out of Chicago.

Exam. Taylor: Well, Mr. Cole——

Mr. Cole: Yes, sir.

[fol. 406] Exam. Taylor: Will you see that that is done, that a man from the Bureau comes over that is conversant with the handling of these inbound manifests and the method of transit, so that we can clear up all these little details? It is vague on the record, the way it stands.

Mr. Cole: All right, but may I ask the Examiner this question: I haven't had an opportunity yet to confer with Mr. Brown, and could we—of course, I am here to comply with your requests as to what you desire on the record, but before you make that request to me definite, so that I can get your meaning, may we have a conference with Mr. Tannehill and Mr. Brown so that we know what to go after, rather than have you ask me to get something that may not even comply with Mr. Brown's questions? May we have that, first.

Exam. Taylor: We will have a short recess shortly, and you can have your conference and then come back and tell us what the result of the conference is.

Mr. Cole: Right now, for the record, I will say I will be glad to get anything Mr. Brown asks us to produce that we have available.

Mr. Brown: It may not be necessary, if the protestants will tell what their towing charges are and if they vary, and so forth, and what they cover.

Mr. Macauley: Mr. Examiner, may I ask that you also bring manifests covering the price paid in to Chicago by [fol. 407] lake carrier vessels arriving from different points. One of our contentions is discrimination against the Illinois River grain in favor of grain arriving by lake carrier vessels, and we would like also to bring in manifests covering lake carrier vessels.

Mr. Brown: That is not in the case.

Exam. Taylor: Is that grain also handled through this same Inspection Bureau?

Mr. Brown: Yes.
Exam. Taylor: It will be available at that time.
Is that all the questions of Mr. Tannehill. Mr. Glover?
Mr. Glover: I want to ask a few questions.

By Mr. Glover:

Q. Mr. Tannehill, in your statement at the start, I understood you to say that the tariffs that are under suspension would not apply on these barge line traffic that is originating on barge lines. Now, I understand that when the tariffs naming the barge line rates are published and filed with the Interstate Commerce Commission, that generally speaking the rates will continue to apply on the barge line traffic?

A. We have made that provision in the suspended issues.

Q. So all traffic from Kansas City via barge line either to East St. Louis or Peoria or Chicago, the proposed rules will not change the application of the present proportional rates on such traffic?

A. That are published by the Federal Barge Line in the items specified in the rules of suspension.

[fol. 408] Q. As I understand, generally speaking, the rates are published by the barge lines and filed with the Interstate Commerce Commission from Kansas City——

Mr. Enoch: What barge line are we talking about? Federal Barge Line?

Mr. Glover: Federal Barge Line, from Peoria, St. Louis and Chicago.

The Witness: There are rates published by the Federal Barge Line on file with the Interstate Commerce Commission, Peoria, St. Louis and Chicago. And those are referred to in the tariff under usspension as being the proportional rates being applicable to that.

By M . Glover:

Q. Now, in your Exhibit No. 2, Page No. 2, under Note 20, suspended note, supplement 7 of Agent Jones' freight tariff ICC 3300, you have this note: "Rates will also apply on shipments moving from Kansas City, Missouri, to Chicago, Illinois, or Peoria, Illinois, under rates published in Item 3632 of Federal Barge Lines Freight Tariff No. 31-J, ICC No. 148; supplements thereto or successive issues thereof." Now, as I understand, that is the kind of item that you have

provided in the new tariffs under suspension which will permit the present proportional rates, eastbound from the basin point, to apply on traffic via barge line from Kansas City?

A. That is not the kind of an item. That is the item, the one you just read.

[fol. 409] Q. That same item—I read the item applying to Chicago and Peoria, and the same kind of an item reading with St. Louis and so forth, is maintained under other items?

A. That is correct, and refers specifically to Item 3632 of the Federal Barge Line Tariff 31-J.

Q. And the item that, where it states Item 3632 of the Federal Barge Line tariff, that names, as I understand, grain rates and includes alfalfa meal, is that your understanding?

A. I don't know that item offhand, sir. You probably know more about it than I do.

Q. But the rates eastbound from these basin points where you undertook to make some exceptions or limitations on the application do name rates on alfalfa meal as taking grain rates, is that correct?

A. No, sir. In our territory they don't name any rates, alfalfa meal rates taking grain rates.

Q. Do they name rates on alfalfa meal?

A. We have rates on alfalfa meal but they are not grain rates. I am talking about territory east of Chicago.

Q. But the tariffs under suspension do name rates on alfalfa meal?

A. The tariffs under suspension name rates on grain and grain products, as I recall. What is in that grain and grain products, I can't remember.

Mr. Glover: That is all.

[fol. 410] Exam. Taylor: Any further examination of this witness by parties in favor of the proposal? (No response.)

We will recess for five minutes.

(A short recess was taken.)

Exam. Taylor: On the record. Mr. Breen, do you wish to enter an appearance at this time?

Mr. Breen: Yes, sir, if you please. John E. Cassidy, Attorney General of Illinois has asked to intervene in this proceeding, but before doing so, he desires to determine

whether or not the public interest justifies such an intervention, so he is represented by Edwin T. Breen, First Assistant Attorney General and Benjamin Schwartz, Assistant Attorney General, merely for the time being sitting as observers to determine whether or not such public interest exists; and Miss Court Reporter, will you see we get a copy of this proceeding.

Exam. Taylor: Mr. Cassidy is not present.

Mr. Brown: Mr. Examiner, apparently it will not be necessary to consider whether an examination should be made of the barge manifests, because I understand that, from what Mr. Belnap said a while ago, the protestants will tell what transportation charges they have paid.

Exam. Taylor: Is that your understanding of it, Mr. Cole?

Mr. Cole: That is my understanding, that——

Exam. Taylor: Now, if Mr. Belnap's testimony does not fully and adequately cover the subject, will you still be [fol. 411] willing to put a witness on——

Mr. Cole: Absolutely.

Exam. Taylor: From the Inspection Bureau?

Mr. Cole: Absolutely. Any time that either of the parties so desire; if it later becomes necessary.

Mr. Macaulay: Mr. Examiner, in order that we might make progress and not be caught at the end of the hearing without being prepared, if it is not the intention of the CFA to furnish this information as requested by Mr. Brown, I would like to know it so that I might arrange for a subpoena. I would like information regarding the manifests from the lake carrier vessels and from the Federal Barge Lines operating out of Kansas City, as well as whatever manifests they might care to have with reference to the barge traffic from Illinois points, from which reshipping rates are granted. If it is not their intention to bring it in as originally requested, then I want to know it now so that I might arrange to subpoena it in.

Exam. Taylor: Mr. Cole.

Mr. Cole: Mr. Examiner. I think I don't state this as a positive fact, but I think that before the hearing gets very much further along, the information this gentleman requests will be bound to find itself on the record, and it might answer all of his present requirements, and suppose we let it go like Mr. Brown has until he sees whether that information is furnished; and if at the end of the day or [fol. 412] perhaps tomorrow at lunch time, if he is still

concerned, I think that he can get in touch with all of us again.

Mr. Macaulay: I will be glad to stipulate with you as to a specimen form of each one, but I would like to have in the record, irrespective of whatever testimony is offered as to rates, I would like to have in the record the nature of these manifests. And as long as it has been called for and made a point of, I think we should go through with that and unless we are able to get a stipulation as to a form, which we can decree, I am sure, is the form generally used and the statements therein included, then I would like to know now so that I could prepare myself to require the production of it.

Mr. Cole: May I know who this gentleman represents?

Mr. Macaulay: Mr. Macaulay, representing Finnegan Grain Corporation of Morris, Illinois.

Mr. Cole: Well, Mr. Examiner, I am in no position now to stipulate as to the form of any of these things, because, if you will remember, the examination that we just had, neither myself nor the witnesses have examined it, so that I couldn't begin—our witnesses and myself wouldn't know what one of the things looked like if you showed it to us.

Exam. Taylor: It is a transportation paper of some sort or another.

Mr. Cole: But I have never seen one and neither has my witness.

[fol. 413] Mr. Macaulay: What I have in mind, there are undoubtedly thousands in the file. If you could take one of them and agree that that would be a representative form, that would be satisfactory.

Exam. Taylor: That is, of each form of transportation, barge in or lake in or——

Mr. Macaulay: Federal Barge from Kansas City.

Exam. Taylor: Or Federal Barge from Kansas City; either of the three forms. Just hold that, then, and reserve it, if you will.

Mr. Macaulay: Just so I don't get caught short, that is all.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Is there any more examination of the witness Tannehill by parties in support of the suspended schedules? (No response.) Cross-examine.

Mr. Belnap: Mr. Examiner, I ask permission to defer my cross-examination until after the noon recess so that I can run through the exhibits. I think I can shorten it by doing that.

Exam. Taylor: Any objection to that? (No response.) Mr. Tannehill, step aside until after lunch.

(Witness excused.)

Mr. Macaulay: May I have an opportunity to cross-examine?

[fol. 414] Exam. Taylor: I thought we agreed to wait until after lunch.

Mr. Macaulay: Oh, I beg your pardon.

Exam. Taylor: It will be reserved until after lunch, cross-examination.

Next witness: Are the exhibits distributed for the next witness?

Mr. Cole: Perhaps the parties don't realize this is the only witness for the Official territory lines.

Exam. Taylor: Then except for the cross-examination, that concludes your case?

Mr. Cole: For the Official territory lines, it does.

Mr. Belnap: Are we dividing the respondents into two groups?

Mr. Cole: No, the only thing I understand, there are some other carriers that came in here in favor of it, and I don't know whether they have any witnesses who care to go on the stand or not.

Mr. Belnap: As for the respondents who appear here to justify the suspended schedules, you have made your case?

Mr. Cole: That is it, yes, sir.

Exam. Taylor: Carriers in support of the suspended schedules may call their first witness.

Mr. Enoch: Mr. Sperry.

Exam. Taylor: Mr. Sperry, have you distributed your [fol. 415] exhibits?

Mr. Sperry: Yes, sir.

Exam. Taylor: Are you ready to proceed, Mr. Enoch?

R. E. SPERRY, was sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Give your name to the reporter.
A. R. E. Sperry, 516 West Jackson Boulevard, Chicago.
Q. What is your position?
A. I am Chairman of the Illlinois Freight Association.
Q. How long have you been with the Illinois Freight Association?
A. Since 1921; January.
Q. And just very briefly, what are your duties there in connection with the activities of the Illinois Freight Association?
A. My primary duty is to preside at meetings of the representatives of the carrier member lines, at which are discussed problems of mutual interest to the carriers, which activity also includes that contact with the shipping public with respect to the same problems.
Q. During all of your experience there, you have been in direct contact with rates, freight rates published by the Illinois carriers?
A. I have.
Q. Have you prepared an exhibit to submit in this case?
A. I have.
[fol. 416] Q. It has been distributed?
A. It has been.

Mr. Enoch: We will ask that that exhibit be marked for identification as No. 13.

(Exhibit 13, Witness Sperry, marked for identification.)

By Mr. Enoch:

Q. Mr. Sperry, will you please explain the Exhibit No. 13.
A. The exhibit which has been numbered 13 consists of 19 pages and is a statement of rates in cents per 100 pounds applicable to corn from stations in Illinois and Indiana, which rates apply without transit privileges. The statement also shows interstate rates and specifics to Chicago on grain from the same origins and the distances in miles to Chicago from the same stations. Reference is made to

the tariffs from which the rates shown in the exhibit are taken.

Q. Have you any further comment, Mr. Sperry, in connection with this Exhibit No. 13?

A. I probably should state the primary purpose for the establishment of the rates on corn designated as local non-transit intrastate, which reflected an attempt on the part of the involved railroads to regain and recapture the volume of tonnage of corn moving from the involved stations to Chicago by other forms of transportation, particularly by water.

Q. This exhibit was prepared by you, was it, under your direction?

[fol. 417] A. It was.

Q. The facts purported to be set out therein are correct?

A. To the best of my knowledge and belief, yes.

Mr. Enoch: I offer it, the exhibit, in evidence.

Exam. Taylor: It may be received.

(Exhibit 13, Witness Sperry, received in evidence.)

Mr. Enoch: That is all.

Exam. Taylor: Questions by respondents? (No response.) Any questions by other carriers in support of the proposed tariffs? (No response.) Any questions by parties in favor of the proposed tariffs?

Mr. Bradford: I have one question, Mr. Examiner.

Exam. Taylor: Mr. Bradford.

By Mr. Bradford:

Q. Mr. Sperry, in referring to your exhibit under the column "Local non-transit intrastate rate," if that rate is paid in on a shipment and is subsequently forwarded under the reshipping rates, does it pay on the outbound shipment the difference between the amount shown in the non-transit rate local interstate rate or specific rate? That is, does he make up the difference?

A. It is my understanding that shipments which may be delivered under the non-transit intrastate rate and later reshipped would be subject to the so-called reshipping rates east of Chicago.

Q. And that would increase your reshipping rate so as to make up a difference between the rates shown in the two

[fol. 418] columns, that is, the local intrastate column and the local interstate column; you make up that difference in the outbound shipments?

A. Not as to a shipment not accorded transit.

Q. Maybe you don't get my question. I mean that if a shipment comes in from any of the points shown in your exhibit——

Exam. Taylor: Use a representative point, Mr. Bradford.

By Mr. Bradford:

Q. Well, we will take the point of Elwood on Page 2, in the second block. It shows a local non-transit intrastate rate of 5½ cents. Now, if a shipment came in from Elwood to Chicago and paid 5½ cents in, then it was subsequently reforwarded, would the outbonud shipment pay the difference between, that is, in excess of the reshipping rate, the difference between the column headed "Local non-transit intrastate" and the column headed "Interstate"?

A. My knowledge of the exact application of the reshipping rates from Chicago is not sufficient to enable me to intelligently answer.

Mr. Bradford: All right.

By Mr. Brown:

Q. Mr. Sperry, are not these non-transit local corn rates published to expire some time in June next year?

A. They have an expiration date and I believe it to be June of 1940.

Exam. Taylor: Is that all, Mr. Brown?

Mr. Brown: That is all.

Mr. Glover: I want to ask a question.

[fol. 419] By Mr. Glover:

Q. Mr. Sperry, in other words these local non-transit intrastate rates will not apply on through bill shipments from origin to destinations east of Chicago and they will not apply on stuff sent to Chicago locally and afterwards shipped east by surrender of the local intrastate freight bill?

A. My answer would be no to the first question, but as to the second question, I have got to make the same answer as I made to Mr. Brown.

Q. In other words, you do not know.

A. I am not familiar with the detail of the application east of Chicago. Traffic between here, from Illinois, rather, to points in the East not coming in to the purview of our organization.

Q. When you say down here in the item "Proportion to Chicago of one-factor through rates to Eastern Trunk Line territory," does that indicate you have through charges published from these same origins in Illinois to points east?

A. I believe there are through rates in effect from Illinois origins to points in Eastern Trunk Line territory.

Mr. Glover: That is all.

Exam. Taylor: Any further questions by counsel? Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Are these local non-transit intrastate rates sometimes referred to as lake locals?

[fol. 420] A. I have heard them referred to as such.

Q. That is the same rate you mean when you use that term, is it not?

A. I would understand so, yes.

Q. When were these lake locals first established?

A. Well, rates of this character were first established, I believe, about five years ago.

Q. Have they been in effect continuously since then?

A. They have not.

Q. What has been, in brief, the history of those rates?

A. Well, the rates as stated—of this character as stated were originally published about five years ago, and since that time there have been several lapses with respect to a rate of this character. In other words, rates were originally published to expire on a given date and they were subsequently published to expire on later dates. In some instances, there was no continuity in rates of this character. They were permitted to lapse and later restored.

Q. Do the rates now apply during the winter months, the period of closed navigation on the rivers?

A. They do.

Q. Previously, was there an elimination of specific rates of this character during period of closed navigation?

A. I believe there was one period in which the rates were not in effect during the winter.

[fol. 421] Q. Do you know how many winters that was true?

A. Probably two during the period of five years.

Q. I understand you are not familiar with the rate structure beyond Chicago?

A. No, I am not entirely familiar with it.

Q. You concern yourself and your association concerns itself only with the rates up to Chicago?

A. Primarily, yes.

Q. And in publishing your own rate structure, you have no concern with what happens to traffic after it gets beyond Chicago?

A. Well, as an individual—no.

Q. I mean as the Illinois Freight Association in the matters which come within their jurisdiction and purview.

Mr. Enoch: I think the witness has indicated he doesn't understand whether Mr. Belnap means him personally or the western railroads.

Mr. Belnap: I mean Mr. Sperry's Bureau, association.

Mr. Enoch: Do you mean the western railroads are not interested in what rate is applied outbound?

Mr. Belnap: I am trying to concern myself with Mr. Sperry as Chairman of the Illinois Freight Association, as to whether the rates which that association authorizes and has made effective are predicated in any part on what happened to the traffic after it goes out of Chicago.

The Witness: Mr. Belnap, I had answered that—I will [fol. 422] state further that one of the committees comprising our association is the Illinois Rate Committee. That committee exercises no jurisdiction with respect to rates from Illinois to points east of our territory.

By Mr. Belnap:

Q. Did your association have anything to do with the publication of rates which are here under suspension?

A. No, sir.

Q. Did you make any representation to the eastern lines of what you would like to have them do?

A. Not directly, no, sir.

Q. Did you do it indirectly?

A. We filed a petition in support of the original and subsequent publications.

Q. Those were petitions with the Commission?

A. They were with the Interstate Commission.

Q. Did you file anything with the Central Freight Association itself?

A. No, sir.

Q. How are these lake locals restricted? What is the manner in which they are restricted?

A. They are published for application to Illinois- with a few exceptions, for application to Illinois intrastate traffic with no transit allowed.

Q. Are they filed with the Interstate Commerce Commission?

A. They are filed with the Illinois Commerce Commission. [fol. 423] But it so happens that in certain instances, the rates are published in tariffs which also bear an interstate number. The rates via the Elgin, Joliet & Eastern and the New York Central, because of their geographical location, also apply the interstate rates; but still with no transit allowed.

Q. What is the nature of the provision which says that there should be no transit?

A. It is a simple statement to the effect that no transit will be granted in connection with these particular rates.

Q. Would you read that rule into the record?

A. I do not have it before me.

Q. It is a rule in the tariff, is it?

A. It is a statement in the tariff.

Q. And it is published in the tariff showing this inbound rate?

A. That is right.

Q. Does the tariff contain any provision regarding setting the rate up to an interstate basis in the event the billing is used in connection with a shipment beyond Chicago via rail?

A. I am not familiar with the tariff provisions?

Mr. Belnap: Do you have a witness, Mr. Enoch, who is?

Mr. Enoch: I have got plenty of witnesses. What is it you want to know, Mr. Belnap?

Mr. Belnap: A description of these lake locals, the manner in which they are restricted. I would like to have a witness who would develop the whole fact as to the tariff situa- [fol. 424] tion.

Mr. Enoch: We will be very glad to assist you in any way you request, but I would like to suggest copies of these tariffs are not only on file with the Commission, but all of Mr. Belnap's clients, in the office of the traffic department of each one of those clients they have copies of those tariffs, and that one particular provision to which Mr. Belnap directs attention, they are in the possession of the protestants as well as ourselves.

Mr. Belnap: It isn't a question of whose possession it is in. It is a question of presenting an exhibit and not being able to explain it; the application of the rates. That is all I am interested in.

Mr. Enoch: You are trying to help me out.

Mr. Belnap: Oh, I don't think you need help; I think you will get along all right.

By Mr. Belnap:

Q. Mr. Sperry, do you know what the effect of the lake locals is as to the movement of the grain which moves inbound on those rates as to its movement east of Chicago?

A. In what regard, Mr. Belnap?

Q. As to how it will move east of Chicago once it is moved into Chicago on these lake locals?

A. Well, it has been my understanding that a greater portion of it moves east by lake.

Q. If it is——

[fol. 425] A. That is based on discussion that I participated in and listened to. I have no facts in connection with it.

Q. That is the effect of the lake locals, is it not, to compel an outbound movement by lake or compel the grain to be locally consumed?

A. Did you say the effect or purpose?

Q. The effect; the necessary effect.

A. I am not familiar with movements, Mr. Belnap.

Q. When these rates are being established or are under consideration, did the Illinois lines consider that as the necessary effect of the rates, that is to say, that it would compel the movement of the grain east of Chicago by lake?

A. It was regretted—it was thought that would probably be one of the effects.

Q. You say it was regretted?

A. Yes.

Q. What was the basis for the regret?

A. Well, it was just unfortunate, as I recall it, that the carriers were required to put in rates of that character to meet these other modes of transportation.

Q. And you regretted that as far as the eastern lines were concerned, they would lose some traffic thereby, is that the situation?

A. We regretted the necessity of establishing these unusually low rates to meet rates of other modes of transpor-[fol. 426] tation not on file or under the jurisdiction of the regulatory bodies.

Q. Did your lines give any consideration to the fact that if grain moves into Chicago on these lake locals, the eastern lines have no chance of participating in the movement beyond Chicago, the eastern rail lines?

A. Well, I can't say as to just what might have been in the minds of the representatives of these carriers, Mr. Belnap.

Q. Was that matter ever the subject of discussion?

A. I do not recall that discussion.

Q. Have the eastern lines ever suggested to your lines that the lake locals ought to be taken out because of the effect it has on their competitive situation east of Chicago?

A. Not through me or through our organization.

Q. No such representation ever made to the best of your knowledge?

A. (No answer.)

Q. What are the rates in the column headed "Specific"? I can read the note, but I wonder, what is the application, the practical application of the rates?

A. As I understand it, these so-called specifics, that is the origin of these specifics first antedated my connection with the railroad business. And these maps reflect the minimum earnings to Illinois carriers in connection with through rates to points in Western Trunk Line territory. Now, there, again, I will have to call attention to the fact [fol. 427] that our committee lacking any jurisdiction whatever in connection with the through rates, I am not in possession of all of the facts. The specifics, though, as stated, are taken from Mr. Jones' ICC 3356 and presumably that tariff fully states their purpose.

Q. Let's take the first station, Willow Springs. If I

understand your exhibit, on the shipment of grain from that point to Chicago, the shipper may pay 5 cents?

A. That is correct.

Q. If he pays 5 cents, the billing is useless in so far as any movement by rail beyond Chicago is concerned, is that correct, Mr. Sperry?

A. I am still not familiar with the application of the rates east of Chicago.

Q. I understood this was a restriction up to Chicago. The eastern lines have no restriction but the lines for whom you appear are the lines who provide this restriction. Am I not correct in my understanding?

A. I can't answer your question, Mr. Belnap.

Q. Don't you know who provides the restriction on these rates?

A. The rates are published in tariffs of the—that is, the rates within Illinois are published in the tariffs of the individual carriers and not through our tariff bureau. I am not familiar with the details of the tariff provision.

Q. Do you know under what circumstances a shipper from Willow Springs would pay 7½ cents to Chicago?

[fol. 428] A. I understand that in the event a shipment would originally or in the first instance move into Chicago under the non-transit rate of 5 cents and thereafter be accorded transit, that after the operation is granted and allowed and performed, the charges would be adjusted on the basis of the higher figure.

Q. 7½ cents? That is additional money paid to the inbound line, is that correct?

A. Presumably the inbound line, yes.

Q. Do you know?

A. I don't know, no.

Q. Under what circumstances does anybody pay 8½ cents from Willow Springs to Chicago?

A. I don't know.

Mr. Belnap: That is all.

Exam. Taylor: Any further cross-examination? Mr. Macaulay.

By Mr. Macaulay:

Q. Do you know when the rates referred to in your Exhibit 13 were published?

A. I do not recall the exact publication dates. Do you mean effective?

Q. When they were issued, when they were made effective?

A. I do not recall the issuing date. My recollection is they became effective May 19, 1939.

Q. Is there any reason for leaving out information of that kind when you are trying to set up the gist of a tariff for the purpose of a record? Well, I will withdraw that. [fol. 429] Would you say that the tariffs themselves contain a note that the rates are applicable only on Illinois intrastate traffic?

A. Yes, sir.

Q. And would you say that they also contain a note to the effect that no transit privileges will be accorded?

Exam. Taylor: Talking of the rates in the first column?

Mr. Macaulay: Yes. I am referring to the tariffs which carry the non-transit intrastate rates.

The Witness: I understand that the tariffs do carry a second qualification to which you refer.

By Mr. Macaulay:

Q. And would you say that they also carry qualification to the effect that the rates expire June 30, 1940 unless sooner cancelled, changed or extended?

A. They carry an expiration date of that character and I understand it to be June 30, 1940.

Q. Without additional qualifications, unless sooner cancelled, changed or extended?

A. That expiration is mandatory in connection with an expiration date.

Q. Would you say with reference to the table set up for the Chicago, Rock Island & Pacific Railway Company, that that is shown in supplement 3 to freight tariff No. 34560-B, issued April 12, 1939, and effective April 19, 1939?

A. It may be April 19. It may have been April or May 19th. I remember the day of the month but not the month. [fol. 430] But this, however, was—is submitted as a statement of effective rates.

Q. Would you say that all the various tariffs that are referred to in your Exhibit No. 13 carries similar exceptions and similar effective dates?

A. I understand that they do.

Q. Do you know whether or not they took the place of any like tariffs that were expiring on April 19, 1939?

What I have in mind is, I am wondering if there was any interval of time——

A. There was.

Q. Do you recall how long an interval of time that may have been, Mr. Sperry?

A. Oh, it might be from October, 1938 to April, 1939.

Q. Do you know whether or not the rates set up in your intrastate column are fixed at or above the cost of handling grain from those points to Chicago?

A. Rail carrier cost?

Q. Yes.

A. Well, I am personally not familiar with what the costs may be, that these rates were fixed or determined by the traffic officers of the respective railroads.

Q. Do you know why a restriction was placed in these tariffs which would restrict this grain so that it could not get the benefit of the application of, say, Note 40 of Tariff 535? In other words, what I have in mind is this. [fol. 431] Under these tariffs, there is a provision to protect the local rate. In the event that it isn't possible to apply the cost of the transportation to Chicago on the rate out of Chicago it would seem as though there would be a discrimination and it would not be in keeping with the provisions of the various notes published in 535, 245-F that are applicable to grain arriving at reshipping points.

A. That was a rather lengthy statement and I don't believe that I have assimilated it, but I believe the tariff provisions to which you refer——

Mr. Enoch: If you don't understand the question, I wouldn't answer.

The Witness: I don't. It is more of a statement and rather lengthy.

By Mr. Macaulay:

Q. Then do I understand that you are not prepared to state whether any credit is given on the rate out of Chicago for the amount paid into Chicago on the intrastate rate?

A. I am not prepared to so state.

Q. You mentioned in reply to a question placed by Mr. Belnap that if there was a shipment out of grain from Willow Springs, the 2½ cents difference would be paid to

the inbound line. Would that not be a violation of the various notes contained in Exhibit 2?

Mr. Day: I object to the question. It seems to call for a legal conclusion.

[fol. 432] Mr. Macaulay: He comes here as a representative of the organization who put these rates into effect.

Mr. Day: It seems to me this gentleman's argument could be left for briefs.

Exam. Taylor: The witness may answer if he knows.

The Witness: Question, please.

(Question read.)

The Witness: As I recall, I answered Mr. Belnap that I believed that it would be so paid, and I am not familiar with the tariff provision to which you refer.

Mr. Macaulay: All right.

The Witness: Would accrue to the inbound line.

By Mr. Macaulay:

Q. Could you state whether or not any policy has been established by the Illinois Freight Association as to the extension or continuation of these intrastate rates in the event that reshipping rates are denied from barge billing?

A. No, sir, not through our organization.

Q. So that to all intents and purposes, these rates will expire on the dates set forth in the tariff?

A. Subject to the statement appearing in connection with the expiration date.

Mr. Macaulay: That is all.

Mr. Childe: I would like to ask Mr. Sperry a question.

By Mr. Childe:

Q. For information, Mr. Sperry, referring to the column [fol. 433] headed "Specific Rates" in your Exhibit 13, are the rates shown in that column published in Jones' ICC number shown in the note at the bottom of the page?

A. I have not personally inspected that tariff but all of the figures in these several statements were submitted to the representatives of the respective carriers and were verified; the statements being made that these figures are published in Mr. B. T. Jones' Tariff 3356.

Q. What we would like to know, are they published rates or are they merely a proportion of the through rate which the western lines received?

A. I believe they are designated in this exhibit as "Proportion to Chicago of one-factor through rates."

Q. Perhaps you can tell me by inquiry during recess what the facts are, whether these are published rates or they are merely proportion rates.

Mr. Enoch: They are not published, Mr. Childe.

Mr. Childe: They are not published?

By Mr. Childe:

Q. What is the purpose of putting these in the exhibit?

Mr. Enoch: Perhaps I can answer that question. We were simply making the picture complete as to all of the charges from these various stations in Illinois to Chicago: and in order to avoid any question which might arise if they were not shown, we put them in here.

[fol. 434] Mr. Childe: Put in here merely for information to show what proportion the western lines get on the through rate?

Mr. Enoch: That is right.

Mr. Childe: That is all.

Exam. Taylor: Any further cross examination of this witness?

Mr. Day: I have just one question to clear up something.

Exam. Taylor: On redirect? Any redirect?

Mr. Day: May I ask just this question?

Redirect examination.

By Mr. Day:

Q. Mr. Sperry, you were asked by someone on the other side of the table here if these rates in your Exhibit 13 were not limited to Illinois intrastate application, and you answered that they were.

A. With one——

Q. With certain exceptions?

A. Yes.

Q. Those exceptions are the two routes of the New York Central and the EJ&E that Mr. Tannehill mentioned?

A. That is correct.

Q. And also the Indiana origins which are shown on your Exhibit 13?

A. Being so much concerned with Illinois, I probably overlooked the fact, for the moment, the Indiana stations in there.

Q. Right on the cover page, you say, "From stations in [fol. 435] Illinois and Indiana."

A. Yes.

Mr. Day: That is all.

Mr. Enoch: Mr. Sperry——

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. During the early part of your cross examination, some reference was made to the period of closed navigation on the Illinois River. Do you know of any period of closed navigation on the Illinois River from points like Ottawa or Morris to Chicago?

A. I probably could have been a little more careful in making my answer. When the season of closed navigation was referred to, I probably thought of that period from November 15th, say until late in March. Now, answering your question directly, I know of no time in recent years—past six years—that the Illinois River has been closed to navigation for any substantial period.

Q. You had in mind the period of closed navigation on the Lakes, did you not?

A. Yes, I did, and that period from November 15th to some time in March.

Mr. Enoch: That is all.

Exam. Taylor: Are there any further questions of this witness? (No response.)

By Exam. Taylor:

Q. Mr. Sperry, just let me clear up in my mind these [fol. 436] local non-transit intrastate rates or lake locals, as they are called. Did you state that those rates were established to meet various forms of competition by other modes of transportation?

A. Yes, sir.

Q. Do the tariffs so state that publish these rates?

A. I believe the tariffs carry the statement that the rates are established to meet motor truck and water competition on water and motor truck.

Mr. Enoch: Perhaps there should be an explanation at this point. They appeared in the tariff at the time the reduced rates were originally published. My information now is that it is not, that particular description and the purpose of the rates does not appear in the present tariff.

Exam. Taylor: Anything further from this witness? (No response.)

(Witness excused.)

Exam. Taylor: We will recess at this time until 2 o'clock.

(At 12:30 o'clock P. M., December 19, 1939, hearing adjourned until 2 o'clock P. M.)

[fol. 437] Afternoon Session

2:00 o'clock p. m.

Exam. Taylor: All right, come to order, gentlemen. Cross-examination of Mr. Tannehill at this time. Proceed, Mr. Belnap.

W. T. TANNEHILL resumed the stand and testified further as follows:

Cross-examination.

By Mr. Belnap:

Q. On your exhibit 1, Mr. Tannehill, why did you start your history with 1910?

A. For the reason that that was as far back as we could go without a great deal of research in the tariff bureaus and because that was where we started,—approximately where we started on our rate exhibit number 7.

Q. As I understand it, as of 1910 the rates and the rules in connection therewith were published in the individual issues, is that right?

A. These particular ones were, yes sir.

Q. There was in effect then proportional rates which applied, as you illustrated in the notes taken from the L. S. & M. S. Railway tariff?

A. They applied as per the application shown as in this exhibit, of which these L. S. & M. S. tariffs are an example.

Q. At that time was there any movement of grain by barge into Chicago?

A. To my knowledge, no.

[fol. 438] Q. There was a movement by lake?

A. I would assume so although I was not located in Chicago at that time, but I would assume there was.

Q. The tariffs provide for the application of proportional rates on the ex-lake grain?

A. That is correct.

Q. Now, that was true in 1910 and has been true ever since, has it not, as to the ex-lake grain?

A. Yes.

Q. Now, when did there a movement via barge into Chicago develop?

A. Well, the first that I recall of my knowledge was sometime shortly prior to 1935. I cannot recall whether there was a small movement developed in 1933 or 1934 but I think there was some movement in 1934, but whether that originated in Illinois or originated at the Missouri River I cannot say. The first movement that came to my attention was a movement of wheat. I doubt if that came from any Illinois origin.

Q. That was a movement via the Federal Barge Line from Kansas City, wasn't it?

A. I couldn't say how it moved into Chicago other than by barge.

Q. And under your tariff rules at that time you had proportional rates which were applicable on tonnage which arrived inbound via a water transportation line?

A. At that time we had whatever is shown here in this exhibit number 1 for the territory, yes.

[fol. 439] Q. Well, that was the provision of the rule, was it not, Mr. Tannehill, making the proportionals applicable on grain received inbound in Chicago via water without specification as to whether it was lake vessel or barge or anything else, isn't that correct?

Mr. Day: Well, Mr. Examiner, I submit that the tariff provisions, which are incorporated in exhibit 1, as I understand it, are the best evidence of what the tariffs provide. There is no use of asking Mr. Tannehill about that because even if he contradicted it because of lack of recollection

or for some other reason, what is in the tariff, the tariff provision would still stand as the best evidence.

Mr. Belnap: Well, is there any doubt about that, Mr. Day?

Mr. Day: Well, I don't know but I do know that the provisions are fully set out in the exhibit.

Mr. Enoch: Well, I think there is a question about it, if the Examiner please.

Exam. Taylor: The witness may answer if he knows.

Mr. Enoch: As to the proper application of the proportional rate.

Exam. Taylor: It is his exhibit. He is expected to know.

Mr. Day: I will note an exception, please.

Exam. Taylor: Exception noted on the record.

The Witness: Without checking each one of these it is my belief that they did apply at that time.

[fol. 440] Mr. Belnap: Yes.

The Witness: However, the wording of the various changes are in here.

Mr. Enoch: May I be pardoned now for this interruption? I would like to know what the witness intended by that answer, that these proportional rates did apply to what kind of inbound traffic?

Exam. Taylor: Well, I think we had better go back and get Mr. Balnap's time to which his question related.

Mr. Belnap: The time when the barge shipments commenced to move into Chicago.

Exam. Taylor: That was in 1934 and 1935?

Mr. Belnap: He said it may have been in 1933.

Exam. Taylor: In 1933, 1934 or 1935, Mr. Witness, can you pin it down and give us the page number that covers that?

The Witness: In 1935 they did apply.

By Mr. Belnap:

Q. In what rule of your exhibit 1?

A. Well, you will have to give me a litle time to study the exhibit.

Q. All right.

A. Now, by the way, it will shorten my study if you will tell me what territory you are talking about.

Q. I would like to ask both about C. F. A. and Eastern Trunk Line.

A. Effective June 28, 1935—let's see, wait a minute.

Q. What page of your exhibit?

[fol. 441] A. Just a minute. Page 6. And the change in that—the previous change was on May 1st, 1924.

Q. Now, in that period?

A. In what period?

Q. In this period, 1924 up to 1935?

A. Up to 1935.

Mr. Day: Look at page 4, Mr. Tannehill.

The Witness: To C. F. A. territory, if it originated in Northwestern territory it applied. Effective June 28, 1935 the rule was changed to some extent.

By Mr. Belnap:

Q. What was the nature of the change at that time?

A. In 1924 the note read, among other things: "On shipments which arrive by boat lines to stations shown in note 60"—that is the list of Chicago stations—"originating at any points in the above defined territory." That "defined territory" as Northwest. In 1935, June 28th, it read: "On shipments which arrive by boat lines at Chicago, Kewanee, Mackinaw City, Manitowoc, Menominee, Manistee and Milwaukee."

Q. What page in exhibit 1, now?

A. Page 6.

Q. Which note?

A. Note 40, the last sentence of that note.

Q. It did apply on grain arriving via boat lines regardless of the territory of origin?

[fol. 442] A. That is what it says. on shipments which arrive via boat line at Chicago and the other points.

Q. And before that was there some question as to whether the grain had to originate in the Northwest?

A. Yes, there was.

Q. There was some question before that. The tariff clarified it, to which you now call attention?

A. I don't know whether it would clarify it for that purpose. We changed the language, however, as was noted in the exhibit.

Q. Which did result in making it a little plainer?

A. Unfortunately it did.

Mr. Day: Now, Mr. Examiner, I want to renew my objection here. What Mr. Tannehill has attempted to testify to

here is based on language which is entirely within the four corners of this exhibit, as I understand it. Is that right, Mr. Tannehill?

The Witness: That is correct.

Mr. Day: Now, regardless of how anybody construes this tariff, the language is here and that is the best evidence of what the tariffs contain.

Exam. Taylor: Well, Mr. Day, this witness put this exhibit in, didn't he?

Mr. Day: I know he did.

Exam. Taylor: He expected to be cross examined on it, didn't he?

Mr. Day: He put the exhibit in so the Commission and the [fol. 443] parties could have the language of the tariffs. Now, anything that the witness says cannot vary one particle any particular rule of that tariff.

Exam. Taylor: But he can explain it.

Mr. Day: I don't think so.

Exam. Taylor: Well, do you make an objection?

Mr. Day: Yes, I do object.

Exam. Taylor: Objection overruled. Proceed, Mr. Tannehill.

Mr. Day: Note an exception, please.

Exam. Taylor: Exception noted.

By Mr. Belnap:

Q. Now, this note 40 shown on page 6 of your exhibit, which was put in that style, as I understand it, on June 28, 1935, gave the rates to what destination territory?

A. Central territory. Now, you wanted Trunk Line and New England also?

Q. Yes. Let me ask you about this Central territory.

A. All right.

Q. Now, then, you bring the history down to the present date and insofar as the application of the proportional rates on water borne traffic are concerned am I to understand that no change was intended until the one which came about and which brought about this suspension proceeding?

Mr. Day: Well, now, Mr. Examiner, so that I won't be making a lot of objections here, I want it to be understood [fol. 444] that I object to any of these questions attempting to construe or interpret or place any particular significance

into any of the language in the tariffs that are shown in the exhibit 1. That is absolutely—the language itself is absolutely the best evidence and, as I say, I would like it to be understood that I object to this and all questions attempting to put some different kind of a meaning to that language.

Exam. Taylor: You so understand it, don't you, Mr. Belnap?

Mr. Belnap: I understand.

Exam. Taylor: That the tariff speaks for itself. You are merely seeking information, aren't you?

Mr. Belnap: That is right.

Mr. Day: But you don't expect us to be bound by anything different from what is in the tariff, do you, Mr. Belnap?

Mr. Belnap: The tariff will speak for itself. Now, if there is any controversy about the application of the tariffs, I think it is normal to——

Mr. Day: We can rely on the tariff.

Mr. Belnap: May I finish my sentence?

Exam. Taylor: Proceed.

Mr. Belnap: Have I your permission to proceed, sir?

Exam. Taylor: Proceed.

Mr. Belnap: Where was I, Mr. Reporter?

Mr. Day: You wanted to finish a sentence.

Mr. Belnap: You interrupted me and I don't know where [fol. 445] I was really at.

Mr. Day: Just so we have that understanding, Mr. Examiner. As I say, I don't want to be making a lot of objections here but I do want it understood that we object to going beyond the language of the tariff itself.

Exam. Taylor: The objection will be noted on the record. Read the question, Mr. Reporter.

(Question read.)

The Witness: I don't understand with regard to the word "intention". However, no change was made from June 28, 1935 until September 15, 1939, when we attempted to make this correction which is now under suspension and after a conference with representatives of the Commission's staff withdrew the supplement and filed a new one on October 15th, which is now under suspension.

By Mr. Belnap:

Q. The one that you originally filed and withdrew, what was the difficulty with that supplement, Mr. Tannehill?

A. Well, the particular difficulty with that supplement was that it was not a clean-cut job of saying what we intended and the particular reason for withdrawing it was that certain members of the Commission's staff indicated to some of our representatives that it was hard to understand the tariff and they didn't understand what we were trying to do, so we said we would withdraw it and to a clean-cut job [fol. 446] and when we did that clean-cut job we added back the provision that these proportional rates would apply in connection with grain and grain product rates published from Kansas City to St. Louis, Peoria, Chicago via the Federal Barge Line and filed it with the Interstate Commerce Commission. We added in the note making reference to that item in their atriff.

Q. So the net change that was finally made, which you are here to justify, is removing the application of various proportional and reshipping rates from traffic which arrived in Chicago via the barge line on rates and charges which are not on file with the Commission?

A. That is correct.

Q. That is the whole sum and substance of the change?

A. Removing the application of the proportional rates.

Mr. Enoch: May I have Mr. Belnap's question read?

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

By Mr. Belnap:

Q. Now, will you point out in your exhibit, insofar as Trunk Line territory, the note covering the application of proportionals which was in effect when there first developed a movement of grain via barge and the Illinois Waterways into Chicago?

A. Well, it was applicable in 1921 under note 20, page 14.

Q. When you say "applicable", by that do you mean the proportionals were applicable on grain arriving via water at Chicago?

[fol. 447] A. Yes, sir.

Q. Regardless of whether it was a barge or lake vessel and regardless of whether——

A. Well, of course, we had no barge at that time and we did not make a designation.

Q. That would not affect the application of the item, would it?

A. That is our trouble, we did not tie it up at that time and then when the barge lines came along, why, we had a hard time tieing it up and that is just what we have got around to doing now and are still having trouble getting it into effect. And then they were changed in 1924 by the page 18½ which you have, which still made a provision for the rail and water transportation, however, And following that we made no change until the change we tried to make on September 15th and then later made it on October 15th.

Q. Mr. Tannehill, when you offered these exhibits you called our attention to certain pages and cautioned us that those applied only at Chicago—I mean only at Peoria?

A. Certain rules. I did that for the reason that when this exhibit was prepared they took all of the notes and I did not want anything to be confused, I didn't want anyone to be confused that all of these notes apply at one particular point. In other words, if I had said, for example, on page 17 that note 40 applied at Chicago and you had gone over to note 20 you would not have been able to recon-[fol. 448] cile them and I found that they had not shown in this enough to indicate that they applied at Peoria.

Q. Have you in your oral testimony supplemented the exhibit so that it is now complete and self-explanatory?

A. I have, sir.

Q. Are you familiar with this intrastate adjustment of Lake locals, Mr. Tannehill, so that you can testify about it?

A. I did my best. I put it in an exhibit.

Q. You are familiar with that adjustment?

A. Well, I am familiar with what it did to our lines east of there, if that will help.

Q. Well, I would like to know about that. What is the fact?

A. I think I can probably answer most of your questions. I will do my best.

Q. I say, what is the fact? You said the effect on your lines east of Chicago. What has been the effect?

A. What I mean when I said east of there, I mean east of the Illinois River where certain of our lines, such as the New York Central, had to reduce their rates from DePue

and Streator and Lawston because of other lines reducing their rates to meet this Illinois water and we carried through and made reduced rates. Follow the line of the New York Central within that circle over through——

Exam. Taylor: On exhibit 3?

The Witness: On Exhibit 3. Lawston, Streator, Dwight, [fol. 449] Reddick, Kankakee, Momence, Delmar, then across the state line to Schneider, Indiana, cutting over into the Indiana grain territory and north. So it has had its effect all the way across that line, the meeting of the situation that had been created by the water in the vicinity of the Illinois River.

By Mr. Belnap:

Q. Now, then, how far would you say the territory extends which you characterize as in the vicinity of the Illinois River?

A. In the vicinity of the Illinois River, I would say points like DePue and Moronts, which is not shown on the map but is between Granville and McNab, you will see those two points there on exhibit 3 and, of course, since that time we have found the trucking of that grain quite a distance to the Illinois River.

Q. How far?

A. Well——

Q. Based on your investigation?

A. Based upon my investigation they have come over within four or five miles of Kankakee, Illinois.

Q. And to what points on the Illinois River is grain trucked from within four or five miles of Kankakee?

A. My advice is to Morris.

Q. Then do I understand that your carrying the rate over into Illinois was simply the result of holding the rate from the point as the maximum rate?

[fol. 450] A. Well, to a large extent that was true. Of course, other lines meeting the Illinois River situation, like the Santa Fe through Streator, the Alton line through Dwight, the Wabash through Reddick, were directly competitive with that line and they having elevators there would have to meet whatever situation was created there if they wanted to handle that grain traffic.

Q. How far is it from Kankakee to Morris cross country, Mr. Tannehill?

A. Why, I would only have to guess that, Mr. Belnap, and I might be far wrong. I would say offhand cross country is 40, 42 miles, something like that.

Q. I understand that is approximately right. How far is it from that same point to the elevators in South Chicago?

A. From the same point to the elevators in South Chicago would be probably 60 miles.

Q. Yet you understand that grain is trucked over to Morris and there put on a barge to get to these elevators?

A. That is my advice; that is. from just a few miles west of Kankakee, yes, sir.

Q. How much grain is so moved?

A. Oh, I have no knowledge of the volume.

Q. Is there any substantial volume trucked direct from that territory into Chicago?

A. Not from that territory, to my knowledge, into Chicago.

[fol. 451] Q. Is it the intention of your exhibit, Mr. Tannehill, to show the character of rate adjustment as shown on Mr. Sperry's exhibit 13?

A. That is correct. Throughout the two sets of rates, the state or the non-transit rates and the interstate rates applicable at Chicago.

Q. How are the intrastate rates restricted, what is the method of it?

A. The intrastate rates are restricted to apply only on Illinois state traffic.

Q. That is a restriction by the line publishing the rate?

A. That is correct.

Q. Does that line also provide that the rate may not be used in connection with a transited shipment?

A. In connection with a transited shipment, I am not certain but I would say there would be no necessity for their application for transit being nothing more than state rates. There would be no place in the state for it to go after it arrived in Chicago.

Q. Could you tell me what the tariff applies as the restriction against transit?

A. No, I cannot as to the intrastate rates.

Q. Can these rates be used at the time the shipment is made and then transit claimed on the shipment and the inbound charges set up to the higher interstate basis?

[fol. 452] A. Yes, sir, and my exhibit number 12 shows 792 cars so handled. In other words, they moved in on the lower state rate and when they were transited out the inspection bureau set the charges up. Take my exhibit 12, where it says "normal rate," that was the rate which was assessed into Chicago on those shipments.

Q. Do these lake locals apply on the destination end at interstate points in the Chicago switching district?

A. I think I should correct you that these are not published as lake locals, to my knowledge.

Q. Now, they are commonly referred to that way, are they not, Mr. Tannehill?

A. That may be but the grain trade have a lot of terms the same as we have that I don't think are proper and when you say "a lake local", these rates apply to grain traffic going out of Chicago by lake.

Mr. Day: You do not so refer to them, do you?

The Witness: No.

By Mr. Belnap:

Q. If I ask you the question and use that term you know what I mean, don't you?

A. Well, I want to be sure that I know what you mean.

Mr. Day: We heard you give your explanation of that this morning, Mr. Belnap; that is, we know what you mean.

Mr. Belnap: May I proceed with the witness, Mr. Examiner?

The Witness: Let us get you and I straight before we proceed.

[fol. 453] Mr. Belnap: O. K.

The Witness: These rates apply at Chicago on intrastate traffic. Now, that does not mean that they are only applicable to local,—or to lake movement from Chicago. You can go out and buy a car of grain on that basis and use it here in Chicago if you want and those intrastate rates will apply.

Q. Is that billing registered with the inspection bureau?

A. Yes, sir.

Q. And it can be cancelled against what kind of outbound shipment or what kind of disposition?

A. It can be cancelled against local disposition and the intrastate rates applied. It can be cancelled against for-

warded shipments under transit, either milled or the grain forwarded East, but then the higher interstate rate will apply. Now, when I say cancellation for local disposition, that also means lake movement as well as anything sold locally, so I am not differentiating between lake and local disposition.

Q. Now, will you get back to my question as to whether or not the intrastate rates, which I call lake locals, apply to all points which are interstate in the Chicago switching district?

A. They do not, not the intrastate rates, no, sir.

Q. Are there users of corn with plants located in the Indiana portion of the Chicago switching district?

A. If you mean the American Maize at Roby, yes.

Q. Have you the point where the transit operation takes [fol. 454] place or took place, rather, on the cars shown in your exhibit 12?

A. At Chicago.

Q. You mean the City of Chicago?

A. It took place within the Chicago switching limits.

Q. Do you know whether it took place within the Indiana portion of the Chicago switching district?

A. It might have and it might have taken place at Argo, Illinois, the Corn Products.

Q. Could you ascertain that fact from the advices about it?

A. I can.

Q. Will you do so, please?

A. I will but I want to correct this now while we are on the subject: If they w-nt to Roby, Indiana, the intrastate rates did not apply but the interstate rate was applied.

Q. I see.

Exam. Taylor: Do you still seek that information after that explanation?

Mr. Belnap: Yes.

The Witness: If a rate is published intrastate it surely cannot apply to an interstate move whether it went to Roby or Argo or some other point.

Q. Well, that is correct, but is this practice sometimes followed, that grain moves into Chicago but the intrastate rate is paid into Chicago in Illinois and then the cars are subsequently moved or handled to Roby?

[fol. 455] A. Oh, there probably are but they would never handle them for my railroad if I was operating it when they moved it over to Roby,—the charge would be immediately set up and the interstate rate paid.

Q. That would have to be so, wouldn't it, under the tariff?

A. If they didn't want to go to jail it would.

Q. Are there any such cars included in your exhibit number 12?

A. They might be.

Exam. Taylor: Now, Mr. Belnap, do you want to withdraw that request?

Mr. Belnap: No, I would like to know to what extent that is true.

The Witness: I can tell you whether any of these go to Roby or whether it is all milled within the Illinois part of the Chicago district.

Mr. Belnap: Now, you see, in that situation, Mr. Examiner, that milling at Roby, they would have to pay an interstate rate.

Exam. Taylor: I understand but I thought maybe you would consider his final answer as obviating the request.

Mr. Belnap: No, I would like to know how many of these shipments were milled at Indiana points so that by force of the circumstances which the witness described they had to pay the interstate rate.

The Witness: Now, let me explain this, Mr. Belnap, these were taken from expense bills which have been used for [fol. 456] cancellation in the inspection bureau before they sent them to the individual roads' auditors for correction to the higher basis because the transit had gone out. I may not be able to check every one if since this report, which was made last week, those expense bills have gone back to the individual auditors bit I can develop whether or not there were any of them transited at Roby.

Q. While you are ascertaining that will you also ascertain for us, please, whether any of the cars shown on exhibit 12 went through elevators in Chicago so that the elevator—when the grain was reshipped from the elevator the penalty was assessed and paid?

A. May I have that read, please?

(Question read.)

Mr. Brown: Reshipped where to?

Mr. Day: Mr. Examiner, may I just suggest, perhaps in the interest of expedition, that if Mr. Tannehill will look at his exhibit 12 he will see on it shipments that originated, for instance, at Belshaw on the New York Central, which has an interstate rate and which was explained first in your testimony and later by Mr. Sperry, that there are those interstate rates and they would apply to a point like Roby, would they not?

The Witness: Yes. Of course, Mr. Belnap was talking to intrastate rates, not interstate rates.

Mr. Day: I understood he was covering the entire situa-
[fol. 457] tion of these rates from Illinois and Indiana.

The Witness: It is my understanding he was talking to Illinois state rates.

Mr. Belnap: That is right.

Mr. Day: But insofar as a shipment originating in Illinois on the New York Central is concerned, that rate could apply to Roby, Indiana?

The Witness: It could apply to Roby, Indiana; that is correct, sir.

Mr. Enoch: If your Honor please, I would like to inquire whether the intimation is in this line of cross-examination that the intrastate rate inbound is assessed and that assessment is maintained all over although the outbound shipment by rail engages the outbound all rail proportional rate? Is that what you have in mind, Mr. Belnap?

Mr. Belnap: I don't believe I could hear you. You talked a little low. May I have it read?

Exam. Taylor: Yes, let the reporter read the question.

(Question read.)

Mr. Belnap: I have not inquired about that.

Mr. Enoch: Are you seeking information about that?

Mr. Belnap: Not at this point I am not.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. You will advise me about those two matters, will you not, Mr. Tannehill?

[fol. 458] A. I will do my best. I won't guarantee to advise you as to specific cars.

Q. Oh, well, I should think whoever prepared this for you would have a general idea of just what the cars were and how they happened to be in that situation.

A. I will find out what you want.

Q. And, also, as to whether any of them went to elevators. Does exhibit 12 purport to be all the cars in the period mentioned which moved into Chicago with the intrastate rates paid initially and which were later re-forwarded under transit?

A. Oh, no. This says, "Of 792 cars." I would surely hate to think that was all the cars that we handled since—or that the rails handled from that territory. We have handled more grain that that, I am sure, but we handled 792——

Exam. Taylor: This is limited to corn?

The Witness: Well, of corn even, but 792 cars cover the expense bills that the inspection bureau had on hand cancelled ready to send back to the auditors to make the proper balance due bills or any other settlement that was necessary at the time this was made up last week.

By Mr. Belnap:

Q. Mr. Tannehill, in this same period, May 1 to November 30, 1939, how much intrastate billing was cancelled against shipments from Chicago via lake?

A. Well, I haven't said anything about—I think I have some figures on it. I haven't the figures with me, Mr. Belnap.

[fol. 459] Q. Could you get that information for me, Mr. Tannehill, from your inspection bureau?

Mr. Cole: May we have the original question, please? I don't think the witness——

Mr. Belnap: May I state it off the record?

(Discussion outside the record.)

The Witness: I can give you that very quickly. I have it upstairs, if you desire it.

Mr. Cole: Now, wait a minute, off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Let us get back on the record now. Proceed, Mr. Belnap.

By Mr. Belnap:

Q. Now, have these intrastate rates had the effect of making it more difficult for the Eastern lines to participate in the rail movement east of here?

A. Well, it hasn't helped any but the trouble of it is that it is spreading so that not only are we here trying to help our neighbors make a little money, our Western friends, but our own lines have some three thousand miles or better of line in Illinois to which this is spreading and we are interested in the originations of grain in Illinois outside of getting it at Chicago. Our lines have a good many country elevators in Illinois, the lines of the New York Central, B. & O. and the Pennsylvania, Big Four, the Wabash, and the effect of these reductions, whether [fol. 460] they are made because of barge transportation,—I mean whether the transportation is on the barge or what, it is being felt more and more over beyond the Indiana-Illinois line, so that we are interested, before we have to pull down all of those rates and then pull everything east of there down, our grain rates, we just want to look at them, so that they are just entirely too low today without trying to find someway to make them even lower.

Q. My question related to the effect of these intrastate rates on the movement east of Chicago; the effect itself of this adjustment is to push it over the lake if it is at all possible for the grain to move that way, isn't it?

A. The intrastate rates—that is what we thought, but maybe you better withhold that question until I give you the figures of it in this statement.

Q. I will be glad to. And insofar as what you now propose in connection with grain going to Chicago via barge, what will the effect be as far as the Eastern lines are concerned as to the movement?

A. Well, we hope the effect will be of additional all-rail grain from this Illinois territory and not a disturbance of all of the market throughout Central Illinois territory so that our lines in this territory having country elevators on there can have their grain loaded into cars from those country elevators and moved all-rail.

Q. You wouldn't mind answering my question that I [fol. 461] asked you about about the movement east of Chicago, would you?

A. You said the lines east of Chicago.

Q. The rails east of Chicago.

A. Of course, we have some rails down in Illinois.

Q. I mean the rails east of Chicago, the effect.

A. The rails east of Chicago are concerned with this because of the threatened reduction in the rates from points east of Chicago.

Q. You wouldn't mind answering that question about the effect of this on the way the grain is to move?

A. I don't know. If it stands as it is today, or as it is tomorrow, the supply and demand of grain will be the sole answer to how much additional or how much less grain will move east of Chicago.

Q. As far as grain coming into Chicago by barge is concerned it is going to go over via the lakes; that is sure, isn't it?

A. No.

Q. You don't think that is sure?

A. No.

Q. What do you think will happen, Mr. Tannehill, with that grain that comes into Chicago by barge and is going to move east?

Exam. Taylor: That is supposing these tariffs are found justified.

By Mr. Belnap:

Q. Yes, that is supposing these tariffs are found justified. [fol. 462] A. Oh, there will some of it move down there if the demand is found right, probably by rail.

Q. And at what kind of a penalty?

A. And pay the local rate from Chicago?

Q. And how much additional is that over the proportional rate?

A. Well, it would vary; sometimes a cent and a half and sometimes as much as eight and a half.

Q. Did you make this proposal in the hopes that it would influence that kind of a movement via rail from Chicago ex-barge grain, is that the purpose?

A. We made this proposal, as I have stated several times, and filed these tariffs with the hope that we could drive this business off of the water and back onto the rails where it belongs and quit whittling down our rates farther and farther away from the influence of this water all the time

because of cross-country competition in the origin territory and to put this grain back on the rails where it belongs.

Q. Now, let us go back to the question I want to ask you about: That is, the ex-barge grain that has been brought into Chicago by barge, it is here and it is going to move east. Now, did you make this proposal in the hopes that if it became effective you would induce the movement of that grain over the rail lines?

Mr. Cole: Mr. Examiner, if I may be permitted to interrupt here with an objection, Mr. Belnap, I think, is attempting a little too close a pinning down here because our wit- [fol. 463] ness has already three times that I have listened to explained that the railroads that operate east of Chicago also had lines that extended from these very origins and they have lines down within this territory along the river and he said that he wanted to get the grain back on those rail lines that would move east. Now, of course, Mr. Belnap is driving to drive it down, well, if it moved some other way first as an entirety to some destination where it was going? He has been specific now three times on that and I think perhaps the attempt to drive him is, if I may be permitted, it is almost overreaching Mr. Belnap's own purpose.

Mr. Belnap: Well, Mr. Examiner, I don't want to stop to argue the case. I would like to get some facts and I would like to get the facts about the particular situation, the purpose of this proposal insofar as the movement of grain east of Chicago is concerned, that is all I want to know from this witness right now. I will ask him about some other things later but I do want to know if the Eastern carriers in any part made this proposal in a belief that it would induce grain which has come into Chicago via barge to move over the railroads when it left Chicago?

A. No.

Q. You appreciated, did you not, Mr. Tannehill, when you made this tariff proposal that the effect insofar as the movement east of Chicago is concerned,—I am speaking still about grain which arrived at Chicago by barge,— [fol. 464] will be to force it out onto the lakes?

A. Well, that is your statement.

Q. If it can possibly move that way?

A. If the question of supply and demand is there it might move water—or might move rail but it is only natural to

assume if it is export grain or grain that is going far into Trunk Line territory without transit within the nearby C. F. A. territory where it may be milled, it will go by water, but don't overlook this, Mr. Belnap, that the large part of the grain that we handle out of Chicago is for transit intermediate to the seaboard, which they cannot get via lake.

Q. Looking at the situation east of Chicago again, do you believe that if your proposal were made effective it would increase or do you believe it would reduce the tonnage moving via rail?

A. It will do neither except as to the supply and demand for the grain. That is my personal belief.

Mr. Cole: Just a minute. Will the reporter please read that question again and, Mr. Tannehill, will you please listen very carefully to the question and then will you answer it again, please?

Mr. Belnap: Answer it differently this time?

Mr. Cole: No. I have just said that he should listen carefully to the question, I am sure he did not hear it, and then answer it again after he listens to the question.

[fol. 465] Mr. Belnap: Why don't you ask him on redirect, Mr. Cole, if you think he made an erroneous answer?

Mr. Cole: I think he did. I don't think he listened to that question.

Mr. Belnap: Well, why don't you take him on redirect?

Mr. Day: It is not redirect. That is just asking him to listen to the question.

Mr. Cole: He did not listen to it.

Mr. Day: Because it appears to Mr. Cole that he did not understand it. There is no redirect about that.

Exam. Taylor: Let us read the question and see if we can get rid of it.

(Question read.)

The Witness: What was the answer?

Mr. Cole: That is the question. Now, will you please answer that question that he just asked you?

The Witness: Yes. I don't think it will make one iota of change so far as the rates are concerned. It will be entirely a question of supply and demand as to increase or reduction in the movement of grain east of Chicago.

Mr. Cole: East of Chicago?

The Witness: That is what he asked about, east of Chicago.

By Mr. Belnap:

Q. That is, you think you have just as much likelihood of getting for rail movement this ex-barge grain if you increase the rates east of Chicago by eight and a half cents?

[fol. 466] A. That was not your question.

Q. That was the question.

A. But you don't get inbound barge grain which you don't have originally. My answer to your question was that if these rates, and this restriction went in my answer, was that we would handle just as much grain east of Chicago as we are handling today and probably maybe a little more or a little less, based on the law of supply and demand. Now, if you are talking to barge traffic inbound, then using your question, ask your question on barge traffic inbound. That was not what you asked.

Q. All right. Well, I understand, then, your first answer——

A. On barge traffic inbound we might lose. Maybe there won't be as much barge traffic.

Q. Whatever it is it won't go by rail?

A. Some of it might.

Q. Do you think it will increase it?

A. No, it won't increase it. I don't think it will increase the movement of barge traffic.

Q. Do you think it will reduce it?

A. It might.

Q. Do you think it will?

A. It might.

Q. Have you any doubt about it?

A. It might reduce the barge traffic but to the same point it would probably increase our movement of traffic [fol. 467] that came in by rail and out by rail, in all probability.

Q. That is, you hope that the balances, if I understand you correctly, on the last shipment east of Chicago——

A. What we may lose to the barge we will at least pick up from the rail movement east of Chicago.

Q. You hope to get the additional movement into Chicago by rail?

A. Yes.

Exam. Taylor: He has got the figures now on that question that you raised.

Mr. Belnap: All right.

Q. Can you furnish it?

A. What is it you want to know?

Mr. Cole: I think that was the local intrastate traffic inbound that was cancelled.

The Witness: I will give you all of these figures. Get your pencil so that I won't have to repeat it. First I will give you the statement on the barge grain from May 1st to November 30, 1939. There were 618,292,112 pounds arrived by barge and registered with the inspection bureau for transit. That included 411 barges. Using an average weight of 84,638 pounds that meant 7305 cars inbound by barge, that is, the equivalent of. The disposition: 49,130,000 pounds, 607 carloads, moved out by rail to Central Freight Association destinations. 49,050,000 pounds, 553 carloads, moved out by rail to Eastern Trunk Line and New England destinations. That would include any ex- [fol. 468] ports that might be involved. 438,711,516 pounds, 5183 carloads, were reshipped via lake. 19,860,881 pounds or 235 carloads was cancelled for local disposition and on hand November 30th was 61,540,715 pounds or 727 carloads. Now, that shows that very little of the barge grain moved out by rail.

Mr. Belnap: So it doesn't amount to much.

The Witness: Yes, it does because of the origin territory that you are whittling down all the time.

Mr. Day: This can be off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

The Witness: The next statement during the same period, from the territory on exhibit 3, circled in heavy dark lines,—do you know what I mean, Mr. Belnap?

Mr. Belnap: Yes.

The Witness: There was a total of 16,771 cars of grain arrived at Chicago and registered for transit during that period.

Mr. Bradford: Is that of grain or corn?

The Witness: That is corn and so was the other one corn. The disposition was 1111 cars to Central Freight Associa-

tion territory. Reshipped to Eastern Trunk Line and New England destinations 1200 and—1240 cars. Reshipped to all other destinations, 201 cars. Cancelled account lake movement 9503 cars. Cancelled account local disposition [fol. 469] 1032 cars. Total disposition 13087 cars. Balance on hand 3684 cars.

Exam. Taylor: Does that supply the information that you wanted?

Mr. Belnap: That supplies the information, yes, sir.

Q. Can you tell me in that same period what was the total shipments from Chicago on which transit was claimed, Mr. Tannehill, total shipments all-rail?

A. From this territory?

Q. No, From Chicago.

A. Oh, no, I couldn't tell you, I have no record of that.

Q. Do you have the record from the territory shown?

A. No, sir. This is all I have got. I have given you everything I have.

Q. I thought you had. Turn to your exhibit 5. Why do you ask Mr. Brown for a barge rate, Mr. Tannehill, when your inspection bureau has got billing over there that is registered and shows it?

A. Have they?

Q. I understand so from what was said here this morning.

A. Well, I asked Mr. Brown because I thought he would know more what would cover all and I didn't want to take anything too low, I might have gotten a lot of figures from our inspection bureau and one thing and another that might not have covered elevation or some other charge that the elevators or barges put against this grain as part of the transportation by water and I asked Mr. Brown,—I therefore thought Mr. Brown was in a better position to tell me [fol. 470] what that charge was than I would get by guessing at it from information that we might have.

Q. You have on your bills, do you not, as far as the Federal Barge Lines are concerned a statement of their port to port rates in their tariff?

A. No, not any port to port rates, no, sir.

Q. They do not supply you with that document?

A. Oh, no, they do not publish them.

Mr. Oliphant: That is not a correct statement.

The Witness: If they are they do not file them with us, but they do have one rate that is involved here that applies

as a proportional rate on traffic from beyond Kansas City to Chicago, Peoria and St. Louis on traffic destined beyond, which is on the Barge Line Ex Parte 96 formula and published and filed with the Commission and to that these reshipping rates, we are proposing that they apply.

Mr. Oliphant: Might I ask a question? Are you sure, Mr. Tannehill, as to the application of those Ex Parte 96 rates?

The Witness: Well, they are in the formula. Whether they come right down to the point I don't know. I will leave out the "Ex Parte 96." They are about a cent and a half less than the all rail rate, is my recollection.

Mr. Oliphant: They are not made with relation to the formula whatsoever.

The Witness: They are not? I will take your word for it.

[fol. 471] By Mr. Belnap:

Q. On your exhibit 5, Mr. Tannehill, you have a circle reference "2," as far as the rates are concerned but I do not pick it up easily on the exhibit itself. Do you know where it is? I wonder if it should have applied to the distances?

A. It should have applied to the distances.

Q. The all rail distances?

A. Yes, the all rail distances.

Mr. Day: In other words, they are part of a circle 2 reference there, "All rail"?

The Witness: That is right.

By Mr. Belnap:

Q. What is the purpose of your exhibit number 7 and number 8?

A. 7 and 8 both were put in to show that generally the proportional rates via St. Louis, Peoria and Chicago are equalized both for account of the gateways and for the markets from the territory beyond.

Q. Is it possible, however, to go from Chicago via lake and get to final destination on a much different basis of charges than is paid all rail?

A. What kind of lake?

Q. Lake; from Chicago via lake?

A. Well, we have,—we make rail rates that are made with relationship to these rates and they equalize the gateways like Manitowoc.

Q. They do what?

[fol. 472] A. They equalize the gateways like Manitowoc and Milwaukee but they won't apply generally in New England territory. Now, of course, in addition to that you have your charter boats on the Great Lakes which do not file anything with the Commission and those,—I don't know anything about their charges.

Q. If you are coming from South Dakota you can put your grain on a boat at Duluth, can you not?

A. Yes, and it also equalizes through Duluth to some extent by the publication of certain proportional rates from Chicago via the Canadian lines into New England all rail.

Q. Well, can you use the lakes from Duluth in connection with a movement to Peoria or St. Louis?

A. No.

Q. A substantial part or a substantial movement of grain moves over the lakes?

A. Oh, yes, but not at any tariff published rates. I think you will recall that the Great Lakes transited here last year for a time and we billed in Chicago because there was no more tonnage for it. That is the operation that the through rates are published with, not with the——

Exam. Taylor: Not with the what?

The Witness: So-called charter boats. We publish no rates with them.

By Mr. Belnap:

Q. To these destinations where you have a variety of proportionals, one that you called the Northwest and Trans-

[fol. 473] Mississippi, how do you happen to select the Northwest to apply on the barge grain from Illinois River points?

A. That starts out by a statement that it was never intended that they apply from Illinois River points, but——

Q. Mr. Tannehill, the tariff speaks for itself.

Mr. Enoch: Wait a minute. I think the witness ought to be permitted to finish his answer.

Exam. Taylor: Yes.

The Witness: If you will let me finish, please.

Mr. Belnap: Yes, proceed.

The Witness: That is the first part of the statement and again I want to go back to what I said, these grew up like Topsy, these rules, and they were changed from time to time

and now we are trying to fix something that grew up that was never intended and the reason that the Northwest applies is because we applied the Northwest rates on traffic that came via Duluth and thence water to Chicago and then when it got to Chicago by that water transportation we applied this Northwest proportional to that because the grain actually originated in the Northwest at the time that this application was first perfected and it was never intended that they apply to this Illinois River lay-out.

Q. So you put in the tariff that on the Illinois River lay-out you would not apply the Northwest proportionals?

A. No, we had to interpret the tariff that way because of [fol. 474] the way it read. Now we are trying to fix it.

Q. Do your lines make any particular point of the fact that the factors up to Chicago on the barge traffic are not filed with the Commission?

A. Oh, that is part of it, yes, we do, but that is not all.

Q. Would you be willing to establish these proportionals on the ex-barge grain if the barge rates to Chicago were filed with the Commission?

A. If they would not cut the territory I think our lines,—I can only speak for myself now because I have not discussed that with our lines, it is an entirely new factor, but if your rates were filed with the Interstate Commerce Commission on a proper basis, one that was not going to do violence to the rail rates, I think our lines would——

Exam. Taylor: You mean the rail rates or the rail adjustment on grain?

The Witness: Or rail adjustment.

Exam. Taylor: On grain?

The Witness: Yes, sir.

By Mr. Belnap:

Q. Well, take a point like Morris: What do you think the proper rate from Chicago ought to be via barge?

A. I don't know. I haven't gone into it, I haven't given it any thought as to what the proper rate might be. I would want to study that. I would want to study the proposition in its entirety.

[fol. 475] Q. What is the interstate rate via rail from Morris to Chicago?

A. Have you got it? I will take your word for it.

Q. No, I haven't.

Mr. Day: Exhibit 4, page 3, of the Rock Island Railroad.

The Witness: 9½ cents.

By Mr. Belnap:

Q. It has been represented to you by Mr. Brown of the Board of Trade that the barge rate to Chicago is 4⅛?

Mr. Enoch: Now, I would like to know more about this representation, whether it was a rate and what barge line represented it. Do you claim there is a rate from Morris to Chicago of 4 cents, Mr. Belnap?

Mr. Belnap: 4⅛ is what the witness shows as the rate.

Mr. Enoch: I want to know what you claim about it.

Mr. Belnap: I am not claiming or arguing. I am trying to get some facts here, Mr. Enoch.

Mr. Day: Why don't you put in the facts, Mr. Belnap?

Mr. Belnap: When I cross examine a witness I cannot do two things at one time.

Mr. Day: You are not cross-examining the witness. Mr. Brown made clear the statement as to what that 4⅛ cent rate was and told you all about it.

Mr. Brown: And I would like the record to show that I got it out of Mr. Belnap's protest. I do not claim that it is right.

The Witness: I know there are figures in your protest showing what your barge charges and I did not even use [fol. 476] those. I went to Mr. Brown and tried to get the proper charge.

By Mr. Belnap:

Q. And he gave you what he found in some document I filed.

A. That is what he says now.

Mr. Brown: I think that is the only place I ever saw it.

Mr. Enoch: Now that we are on that maybe we can get an explanation as to how that 4⅛ is arrived at. I think that would be interesting to have at this time.

Mr. Belnap: From whom?

Mr. Enoch: If you care to make the explanation. You are the sponsor of it.

Mr. Belnap: I am not on the stand.

Mr. Enoch: As far as the Rock Island is concerned, if the Examiner is willing you can make it right there.

Mr. Belnap: I don't know where it came from.

Mr. Oliphant: Mr. Examiner, the witness has a rate in the exhibit. I think we are entitled to question him on it. I think we are entitled to get the authority for that particular statement.

Mr. Day: He gave the authority as from Mr. Brown and he stated what it was.

Exam. Taylor: I think there is sufficient in the record.

By Mr. Belnap:

Q. I am calling your attention to the rate all rail of 9½ and the barge charge or rate or whatever you want to call it of 4⅛. Now, as I understand it from you, the Eastern [fol. 477] lines would still be willing to apply that proportional in connection with the barge line if this inbound factor was on what they considered to be a proper basis, is that correct?

A. I said I had not discussed it with our lines but I thought that our lines would give consideration to any proposition that might be submitted by the barge lines where they would file their rates and be governed by the rates they file with the Interstate Commerce Commission that did not do violence to the all-rail adjustment and in that we would take into our confidence the Illinois lines serving this territory.

Q. That is, there is a basis on which this thing can be worked out?

A. Well, at least——

Mr. Day: I object to the question. It is going way beyond the scope of any proper cross examination.

Exam. Taylor: Objection sustained. I think we have gone far enough on it, Mr. Belnap.

Mr. Belnap: The thing I would like to develop is how far this matter of non-filing with the Commission is back of this proposition, Mr. Examiner. Perhaps the record does sufficiently show that.

Mr. Enoch: I don't think Mr. Tannehill is in a position to answer it fully and completely because——

Mr. Cole: Well, the Examiner has ruled on it.

Mr. Brown: Mr. Examiner, I think the witness should [fol. 478] first get Mr. Belnap's proposition if he has got one.

Exam. Taylor: Have you anything more, Mr. Belnap?

Mr. Belnap: Just a second, please. Just one other matter.

Exam. Taylor: All right.

By Mr. Belnap:

Mr. Tannehill, When the lines whom you represent perform the service of transporting the grain into Chicago is it not true that the service they may render in taking out of an elevator grain which is covered by barge billing is identical with the service which they would render on the same species of grain if it had lake billing behind it or if it had rail billing behind it?

A. There isn't any question, Mr. Belnap, that in the same elevator the three kinds of grain, we would not render any different service so far as the railroads east of Chicago are concerned.

Mr. Cole: What three kinds of grain?

The Witness: Rail grain that was in that elevator, barge grain that was in that elevator and ex-lake grain that was in that elevator.

Mr. Day: Or truck grain?

The Witness: Or truck grain. Well, truck grain would not get in on ex-barge or any proportional rates either.

Mr. Day: But the service would be the same.

The Witness: The service would be the same but truck grain does not get any special consideration such as we are now giving the barge.

[fol. 479] Mr. Day: The question he asked you was as to the service by the Eastern lines.

The Witness: That is right, the service would be the same.

By Mr. Belnap:

Q. You understood my question related to the service outbound from Chicago to the East and that is the way you answered it, is that correct?

A. You are right.

Mr. Belnap: Yes. That is all I have.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Mr. Tannehill, do you know when the hearings were announced before the C. F. A. relative to the change in these tariffs?

A. I don't know what you mean by "hearings", sir.

Q. I have a hearing bulletin No. 1002, dated November 23, 1938, and this is what I have reference to.

A. Well, you asked when the hearings commenced?

Q. That is right.

A. Your question was wrong to start with. That was a hearing announced and I believe you were there. It was on December 6, 1938.

Q. That is right and it was pursuant to a notice of this kind?

A. And it was pursuant to that notice but as far as hearings, no, sir, it was not. After that hearing we had no further hearings so far as the Central Freight Association General Committee were concerned.

[fol. 480] Q. But that was the first hearing at which the matter was initiated?

A. That was the only hearing.

Exam. Taylor: Now, Mr. Macaulay, will you state for the record what you are reading from?

Mr. Macaulay: I am reading from a mimeographed copy of hearing bulletin No. 1002, Central Freight Association, dated Chicago, November 23, 1938, announcing a hearing on certain specified subjects on Tuesday, December 6, 1938 and one of them is docket advice No. 56,233 relating to the cancellation of Note 40 and I believe the other matters which are now in issue.

Exam. Taylor: Thank you. Proceed.

By Mr. Macaulay:

Q. Do you know whether or not, Mr. Tannehill, the matter of the application or the denial of reshipping rates from barge grain was initiated by the Chicago Board of Trade?

A. It was not, sir, as far as I know.

Q. The reason I ask that——

A. Not so far as our Association was concerned it was not initiated by the Chicago Board of Trade. It was initiated by our association.

Q. In the petition of the Board of Trade of the City of Chicago,—you may or may not have seen this,—is a statement to the effect——

Mr. Cole: I object to any statements that were in any minutes or meetings of the Chicago Board of Trade, if the [fol. 481] Examiner please.

Mr. Macaulay: This is a petition before the Interstate Commerce Commission.

Mr. Day: It is not proper cross examination.

Mr. Cole: In this proceeding? I don't understand what this gentleman is trying to cross examine this witness on, Mr. Examiner.

Mr. Day: It is some petition to the Interstate Commerce Commission by the Chicago Board of Trade in some case.

Mr. Macaulay: I am trying to see whether or not the information that is in this petition might change his answer in any way.

Mr. Day: Well, that would not be proper cross examination with this witness. They have got a Chicago Board of Trade man here.

Exam. Taylor: Objection sustained.

By Mr. Macaulay:

Q. Referring to exhibit 2, note 40, page 4, the rates which are now applicable refer to shipments reaching the reshipping point via a rail or water transportation line and on page 8 is set forth revised note 40, the matter of the grain arriving at Chicago and other lake points, is set forth in a separate paragraph. I want to call that to your attention. Do you know the reason why the lake shipments were put into a different category from grain arriving at a rail,—via a rail transportation line at these reshipping points? [fol. 482] A. Yes, they have always been in a different category in the minds of our carriers. There was never any connection nor any competition, to my knowledge, between ex-lake grain and this corn that is coming up the Illinois River. Your ex-lake grain generally is barley or wheat and it had a rail movement prior to its water movement to Chicago and if we did not provide some basis for that grain so it might come through Chicago, if it only lay in the elevators at Duluth, Superior, Ft. Williams and Ft. Arthur until navigation was open and moved down on the lakes and thus deprived our lines between Chicago and

Buffalo of that tonnage,—it is not tonnage that is competitive with you, as I see it, in any way.

Q. Is there any restriction in those rates which require that the grain arriving via lake carrier vessel must first have had a rail movement?

A. There is not but where is there any place on the Great Lakes that grain is raised?

Q. Well, there is no restriction, though——

A. There is not.

Q. —that it must have had a prior rail movement?

A. There is not.

Q. If it came from foreign countries it could still have come in on the rate even though it did not have a prior rail movement?

A. Your question is rather far fetched as to foreign [fol. 483] countries but answering what you are leading up to, the application of this rate to Argentine corn was the railroads bit to help you, the railroads bit of help when you didn't have corn in this country and had to have it out here to take care of your industries and we did apply it at that time on Argentine corn, it would apply, but under normal conditions we all know that foreign grain, or Argentine corn is not coming into this country through the Great Lakes.

Q. You have answered my question. There is no restriction requiring a prior rail movement?

A. There is no restriction.

Q. And there is no restriction now, if these tariffs are amended, requiring a protection of the local rate out on the rail from the reshipping point, is there?

A. I don't believe you understood your question. Will you read it?

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

The Witness: I don't understand the gentleman's question.

Exam. Taylor: Can you reframe that question, Mr. Macaulay?

Mr. Macaulay: Yes.

Q. Under note 40 before amendment there is a statement to the effect that in order to get the benefit of the reshipping rates a showing must be made of the amount paid to the

reshipping point in order to protect the local rate from [fol. 484] Chicago. Now, under the note 40 as amended there is no such restriction, isn't that correct?

A. No.

Q. Now, Mr. Tannehill, you mentioned that you hoped to drive the grain from the barge to the rails so that you will have more grain to ship East. Can you explain the basis for that hope?

A. Part of your statement is incorrect.

Q. Well, pardon me if it is.

A. I said we hope to get the grain off of the barges. I didn't say so we would have more grain East.

Q. All right.

A. That part of it I want to correct you on, that I didn't say that.

Q. As you interpret this——

A. Wait. We are not in love with water transportation; you are not in love with rail transportation; that is just the difference between the two of us and we are paying our good taxes, our railroads are paying their good taxes for the privilege of operating their lines and we believe that we are entitled to that grain business.

Q. Will you state how you intend that it will come to you if these rates are denied?

A. I think on an reasonable equality of rates the grain will come to us without any trouble.

Q. In other words, if a higher price, or if a lower price [fol. 485] is paid for the grain by rail than by—or a higher, an equal or higher price is paid by rail than by barge it will come to the rails?

Mr. Cole: Just a minute. I object to that question of joining prices in here. There has been no testimony about that.

Mr. Macaulay: I am asking for an explanation of how he arrived at his conclusion that there would be more grain for the rails.

Exam. Taylor: Well, there has been quite a bit of discussion of that, Mr. Macaulay, if you were listening, and Mr. Belnap brought out what might happen with respect to the New York Central Lines in its effective territory and things of that kind and his desire to maintain the present rate structure on grain.

Mr. Macaulay: The point I am trying to bring out, Mr. Examiner, is that grain necessarily can only be shipped by barge by reason of a higher price being paid by the barge than—or the shipper than by rail.

Exam. Taylor: Isn't that something for you to bring out in your evidence? Isn't that something, Mr. Macaulay, for you to bring out in your own evidence? You are going to take the stand or have a witness, aren't you?

Mr. Macaulay: We will have witnesses, yes.

Exam. Taylor: Isn't that something for you to bring out yourself?

[fol. 486] Mr. Macaulay: Except this statement—I think he might explain his view of it.

Exam. Taylor: He has not talked about that.

Mr. Macaulay: Except this statement: I thought he might explain his views.

Q. Mr. Tannehill, would the railroads still allow the same rates on grain arriving via lake at Buffalo from Buffalo to New York and other ports?

Mr. Cole: I object to that, Mr. Examiner. There has been not a word of testimony as to ex-lake rates from Buffalo.

Exam. Taylor: Objection sustained. Have you much more, Mr. Macaulay?

Mr. Macaulay: No. That is all.

Exam. Taylor: We will take a short recess.

(Whereupon a short recess was had.)

Exam. Taylor: All right, let us come to order. Mr. Macaulay, had you finished?

Mr. Macaulay: I have one more question I would like to ask—I will withdraw it.

Exam. Taylor: All right. Mr. Childe?

By Mr. Childe:

Q. Will you refer to your exhibit number 9, Mr. Tannehill?

A. I have it, sir.

Q. Are the rates there shown published as joint through single factor rates?

[fol. 487] A. Which rates do you mean?

Q. All of them on the exhibit.

A. Why, of course they are not, all of them on the exhibit. What is it you want to know about it?

Q. I want to know whether all the all-rail rates shown on that exhibit are published as joint through rates with a single factor?

Exam. Taylor: You mean the first column?

Mr. Childe: Yes, sir.

Mr. Day: It is shown on the exhibit if they are.

The Witness: Yes. Do you see the heading there, "Standard all rail joint through rates"?

By Mr. Childe:

Q. Are those rates in fact based on the combination of the local rates into Chicago plus the proportionals?

A. These here?

Q. Plus the proportionals beyond?

A. No, sir.

Q. Are those the rates referred to in Mr. Sperry's exhibit 13 as subject to the specific proportion shown in the right hand column of exhibit 13?

Mr. Day: I object to the question as not proper cross examination. Mr. Childe can check the other witnesses' exhibit as well as Mr. Tannehill can.

Mr. Childe: The other witness did not know in con- [fol. 488] nection with what rates his exhibit applies and he says that the Eastern lines had that information. I am asking of the only witness that the Official Lines are offering.

Exam. Taylor: The witness may answer if he knows.

Mr. Cole: Mr. Examiner, if Mr. Childe will refer to the bottom of page 2 of Mr. Sperry's exhibit he will see that that specifically has a number mark there and down at the bottom of it it says, "Proportions to Chicago of one factor through rates to Eastern Trunk Line territory" and if he will look at our exhibit number 9 it is readily apparent that our rates run to destinations within C. F. A. territory and to border territory.

Mr. Childe: How about Baltimore, New York and Boston?

Mr. Cole: The top three things, yes, that is Eastern Trunk Line, but the rest of them——

The Witness: Now, may I explain that Mr. Childe did not properly ask his question? He said, "Are all of those rates based on the local rate to Chicago plus the reshipping beyond" and I said "No."

Mr. Cole? Now we are getting it straight.

The Witness: He did not properly ask his question. I think what Mr. Childe wanted to know was as to New York, Baltimore and Philadelphia, or New York, Baltimore and Boston, but that was not what he asked.

Mr. Childe: That is not my question at the present time. [fol. 489] Will the reporter read it?

(Question read.)

The Witness: Why, I will have to get Mr. Sperry's exhibit. Now, as I understand, what you merely are asking is whether or not the rates in the last column represent the factors up to Chicago on which these through rates are based? Is that correct?

Exam. Taylor: The last column of exhibit 13.

The Witness: Is that Mr. Childe's inquiry?

By Mr. Childe:

Q. The inquiry is whether those specifics which Mr. Sperry said were proportions of the through rate are applicable in connection with the all-rail rates shown on exhibit 9 from the Illinois origin points to Trunk Line territory?

A. Oh. Now, that is different when you ask to Trunk Line territory. Those are the division of the rate, through rate that is published and apply up to Chicago; the balance East, which refers to Trunk Line and New England territory, the reshipping or proportional rate.

Q. Do those same specifics or proportions apply on the joint through rates shown on exhibit 9 all-rail to the C. F. A. destinations?

A. Not west of the terminii, no, sir.

Q. Were those proportions or specifics established as a result of negotiation between the Official and the Illinois lines or were they established by the Interstate Commerce [fol. 490] Commission?

A. Well, they have been in effect a good many years, that basis of making rates from Illinois territory and I couldn't tell you how they were arrived at, that is, I mean whether they were arrived at by the joint conferences of the lines or whether later we were instructed to publish through rates and they were made on that basis but I assume that the rates were made after conferences between the Official

and the Illinois lines. The rates on that basis have been in effect for many yearrs.

Q. I won't ask you to take the time now but can you point out to me or supply me before the hearing closes with the points shown on your exhibit 9 to which the all-rail rates are not a combination on Chicago?

A. Yes, I can do that right now. The Buffalo, Boston, New York, Baltimore are based on specifics to Chicago and the proportional rates beyond.

Mr. Day: Pittsburgh?

The Witness: Yes, Pittsburgh is in there and Wheeling, West Virginia generally. The rest of them are not.

By Mr. Childe:

Q. In your exhibit number 11 you make certain comparisons with class rates. What is the purpose of that comparison, what significance do you attach to it in this proceeding?

A. Simply to show the low level of our present rates from within our territory here from Chicago to the desti- [fol. 491] nations shown.

Q. Is it your contention,—or, rather, it is not your contention that the grain rates should be based on the class rates, as I understand you?

A. Well, I am not contending they should be a percentage of the class rate at this time but in our territory under docket 15879 the Interstate Commerce Commission found a level of class rates which was proper. They have also in several cases found that in Official territory sixth class or 27½ per cent of first was not unreasonable and, therefore, we have shown that the rates in question are considerably below sixth class.

Q. Isn't it also true that from points in Illinois to C. F. A. and Eastern destinations you have class rates established which are in some instances lower, taking sixth class, than the existing rates on grain?

Mr. Bradford: Mr. Examiner, I wonder if the counsel will tell what part of Illinois he is talking about?

The Witness: In the first place, the gentlemen's question is incorrect. He asked me whether class rates within Illinois are the same as in C. F. A. territory?

Exam. Taylor: Is that all, Mr. Childe:

Mr. Childe: I wondered if the witness could tell me to what destinations in C. F. A. territory the sixth class rate today from Northern Illinois,—take Morris as representative,—are lower than the present combination of grain rates?

The Witness: No, I have no figures with me.

[fol. 492] Mr. Childe: I think that is all.

Exam. Taylor: Any other cross examination of this witness?

Mr. Cole: May I have some redirect?

Exam. Taylor: Yes.

Redirect examination.

By Mr. Cole:

Q. Mr. Tannehill, on your cross you were asked a number of questions by several of the cross examiners having to do with the construction and understandings and interpretations of these various rules covered by your exhibits numbers 1 and 2. I want to ask you if the information that you gave in answer to those questions and your understanding of any of those rules or influences or interpretations was secured from anything, any place except that phraseology carried in these exhibits 1 and 2 and except the language as carried in those tariffs which are exemplified by exhibits 1 and 2?

A. No.

Q. It is all from those tariffs as carried there?

A. That is correct.

Q. In connection with your answers to some questions involving these barge charges, you said at several times that the barge charges were not filed, and, if I remember correctly, several of the parties took exception to that, indicating that in certain instances some of the barge rates might be on file. Have you made an investigation covering the handling via water, the Illinois River, from these Illinois points to Chicago?

[fol. 493] A. I have, some.

Q. Is all of that grain that moves via the river from these origins in Illinois to Chicago moved by one barge line?

A. No. I am quite certain that it is not.

Q. Do you know of any regulation that would limit the handling of grain on the Illinois River from the origin ter-

ritory we have under discussion to Chicago to any one barge company or to any one kind of barge or is it your understanding from your investigation that anything that would float on the water could handle the grain from the origin to Chicago?

A. Well, it must be anything that will float on the water from some of the things I saw them loading grain in down at Morris and Ottawa.

Mr. Cole: That is all I have.

Mr. Day: And that is true whether they are actual transportation barge lines or private barges?

A. That is true.

Q. All the same?

Q. That is true.

Q. Or of some grain shipper?

A. Our investigation,—I was down not very long ago along the river there. One man says, "Well, we own the barge and we hire somebody," I forget who it was, "to push it up when we get it loaded", and another said the barge company owned it and said they know when they wanted it and others said they load all the barges and the Federal [fol. 494] Barge Line handles the barges, as they said, on port to port rates. Once I called up their office and they were not very anxious, when they knew who I was, to give those to me, to give me the port to port rates. Probably Mr. Oliphant was not here.

Mr. Oliphant: We will be very glad to give you any rates we have, Mr. Tannehill.

Exam. Taylor: Is that all? Witness excused. Next witness.

(Witness excused.)

Mr. Enoch: I call Mr. Rigg.

E. Rigg was thereupon sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Your name is Mr. E. Rigg?

A. Yes, sir.

Q. You are with the Rock Island?
A. Yes, sir.
Q. Located in Chicago?
A. Yes, sir.
Q. In the traffic department of that company?
A. Yes, sir.
Q. How long have you been in the traffic department?
A. 33 years.
Q. And during that time what has your experience been generally in connection with rate and traffic matters?
[fol. 495] A. Yes, the last twenty years altogether in rate and traffic matters.
Q. During that period have you had to do with grain rates and grain traffic?
A. Generally, yes, sir.
Q. Over the entire period?
A. Yes, sir.
Q. Have you distributed an exhibit here which you propose to submit for the record in this case?
A. Yes, sir, exhibit 14 of two pages.

Mr. Enoch: I will ask that that be marked for identification exhibit number 14.

(Exhibit 14, Witness Rigg, marked for identification.)

Q. Are the facts purporting to be set out in that exhibit correct?
A. Yes, sir, to the best of my knowledge and belief.
Q. Have you a statement to make in connection with this exhibit?
A. Yes, sir.
Q. Proceed.
A. The C. R. I. & P. Railway appears in this proceeding as an intervener in support of the respondent's proposal to discontinue the application of the reshipping or proportional rates on grain, or the products thereof, from Chicago and other markets to points in Official territory, or points beyond, basing on Official territory gateways when grain is [fol. 496] transported to Chicago, or the other reshipping or proportional rate points here involved, by unregulated barge carriers whose charges are not subject to regulation by the Interstate Commerce Commission. It is of vital importance to the C. R. I. & P. Railway, and to the rail grain elevators served by the C. R. I. & P. Railway, that

the Eastern railroads discontinue immediately the existing practice of applying their proportional or reshipping rates on grain transported to Chicago, and other markets, by unregulated barges. The existing practice of the Eastern lines in charging a higher rate on grain, or the products thereof, from Chicago to points in Official territory when the grain is handled into Chicago by the C. R. I. & P. from its Illinois points than such Eastern railroads charge from Chicago to the same territory on grain transported to Chicago from the same Illinois origins by unregulated barges, results in unjust discrimination against the C. R. I. & P. Railway and the rail grain elevators which the C. R. I. & P. serve.

The Illinois Deep Waterway from Peoria to Chicago was opened to navigation during the early part of the year 1933. In 1933 the C. R. I. & P., realizing that the corn traffic which it had heretofore handled to Chicago from Illinois points contiguous to the Illinois Deep Waterway would be vulnerable to transportation by river barges, established on corn, carloads, to Chicago intrastate rates from stations on its line in Illinois immediately west of Chicago and as far west [fol. 497] as Utica, Illinois, on a basis substantially lower than the interstate rates. These low intrastate rates carried a restriction that no transit privileges would be permitted in connection therewith. The purpose of this method of publication was with the idea of giving no more favorable application to the rail rates than an unregulated barge would be able to give its rates. That is, we considered and treated the unregulated barge competition from our Illinois points to Chicago as a purely local one and one not involving interstate commerce except to the extent that any grain which arrived at Chicago via unregulated barges and which might be reforwarded by rail to interstate points, we concluded that such grain would be considered as having originated locally at Chicago and that local rates from Chicago would be applied on such traffic. To state the matter in another way, it was assumed by us that any grain handled by an unregulated barge from landings on the Illinois Deep Waterway to Chicago that the grain would, after its arrival at Chicago, be good only for local consumption in Chicago or the grain could be reshipped by boat over Lake Michigan and if the corn which arrives at Chicago by an unregulated barge was reforwarded from Chi-

cago via rail to interstate destinations, it would pay the full local rates from Chicago to the interstate destination. The low non-transit intrastate rates established by the C. R. I. & P. from certain of its Illinois points to Chicago only apply on grain which was or is consumed locally at Chicago or reforwarded by lake boats to points east of Chi- [fol. 498] cago. In 1933 and 1934 there was but a small amount of corn transported by barges operating on the Illinois Deep Waterway from Illinois origins to Chicago. In 1935 the movement by barge substantially increased, particularly from Ottawa and Morris, Illinois. Since 1935 the movement by barge has steadily increased with a corresponding heavy reduction in the movement via the C. R. I. & P. from its origins in Illinois where the competition with the unregulated barge carriers, combined with trucks, is most acute. Exhibit 14, page 1, shows the movement of carload corn via the C. R. I & P. from its stations in Illinois Joliet to Utica, inclusive, to Chicago, for years 1935 to 1938 inclusive including first eleven months of 1939. Please observe the heavy reduction in the movement of corn from Morris to Chicago via the C. R. I. & P for the first eleven months of the year 1939, the C. R. I. & P. handling only 44 cars, as compared with the movement via rail for previous years from Morris which amounted in 1936 to 802 cars. At Seneca, the movement has considerably decreased. During the latter part of this summer a river elevator was constructed on the bank of the Illinois River at Seneca and grain is trucked from the farms to this river elevator for movement via barge beyond. Prior to the construction of this river elevator at Seneca grain was trucked from the territory in the vicinity of Seneca to Morris for movement via barge beyond. From Ottawa, Illinois the movement via the C. R. I. & P. has considerably decreased. The Norris [fol. 499] Grain Company operate at Ottawa an elevator on the banks of the deep waterway and this elevator has drawn corn from C. R. I. & P. territory as far west as Utica, the grain being trucked to the river elevator and moved via barge beyond. Our movement out of Utica has considerably decreased, the grain which has heretofore moved via the C. R. I. & P. being trucked to Ottawa and being shipped by barge beyond. While this statement does not show the movement from La Salle, Illinois, it is important to here state that a river elevator was constructed this

fall by the Continental Grain Company at La Salle and that elevator is now drawing grain from our territory in the vicinity of La Salle for movement via barge beyond. Likewise on our line south of Bureau to Peoria, corn is now moving via barge to Chicago from Henry, Illinois and territory in that vicinity, all of which corn heretofore moved via the C. R. I. & P. Since the movement of corn fluctuates with production, page 2 of exhibit 14 shows the corn production by years, 1934 to 1938, in the counties in which the C. R. I. & P. points shown on page 1 of exhibit 14 are located. Pages 1 and 2 of this exhibit, when compared with statistics which will be submitted later showing the movement of corn via the deep waterway to Chicago, speak for themselves. Insofar as we can determine through daily checks of the barges that are being loaded with corn by the river elevators at Morris and Ottawa, there has been moved to Chicago by barge from Morris and Ottawa combined for the first eleven months of this year over [fol. 500] 9,000,000 bushels of corn or the equivalent of over 6,000 cars at 1500 bushels to the car. Notwithstanding the low non-transit state rates which were established by the C. R. I. & P from its Illinois points to Chicago to meet what the C. R. I. & P. considered to be a local competitive situation between these Illinois points and Chicago, we continue to lose the corn traffic in increasing volume to the unregulated barges and having regard for the additional elevators that are being constructed along the Illinois Deep Waterway we can expect in the very near future, unless this unfair rate situation against the Illinois railroads and the rail grain elevators located on the Illinois railroads is immediately corrected, to lose practically all of our corn to the unregulated barge lines with a consequent drying up or abandonment of the rail grain elevator facilities leaving the grain producers in this particular Illinois territory dependent entirely upon the river elevators and the unregulated barges to handle their grain. It is our conviction that the practice of the Eastern lines in applying lower rates from Chicago on grain, and the products thereof, when destined to points in Official territory or points basing thereon on grain arriving at Chicago via unregulated barge carriers from the Illinois territory than they apply on grain transported into Chicago from the same Illinois

territory by the C. R. I. & P. has nullified our effort to meet the local unregulated barge competition from our Illinois points to Chicago and consequently resulted in the [fol. 501] traffic being diverted from the C. R. I. & P. to the barges and that such diversion of traffic from the C. R. I. & P. Railway will continue to increase in volume until the practice herein under investigation is discontinued.

Q. Mr. Rigg, the Rock Island has a line of railroad extending in an easterly and westerly direction across the State of Illinois with a western terminus of the Illinois division at Rock Island, Illinois and the eastern terminus at Chicago, is that right?

A. Yes, sir.

Q. Now, is there a line connecting with its main line extending from Bureau, a point on the main line, to Peoria, Illinois?

A. Yes, sir.

Q. Can you name the communities served by the Rock Island between Peoria and Chicago that have a population, say, from two, three, five or eight thousand people or more, beginning at Peoria?

A. Peoria, Chillicothe, Henry, La Salle, Utica,—although there is no grain elevator on the river at Utica,—Ottawa, Marseilles, Seneca, Morris, Joliet.

Q. Name the points included in those you have just named that are served by the Illinois Waterway?

A. That is to say, for grain loading?

Q. Yes.

A. Well, grain is moving today by barge along the Illinois [fol. 502] Waterway to Chicago from Peoria, Henry, Illinois—although there is no elevator that I know of at Henry at this time, but they are shipping today grain by barge from that point,—La Salle and Ottawa, Seneca and Morris, Illinois.

Q. Did you ever use this expression in referring to these rates that you reduced here in 1935 and subsequently thereto, as "lake locals", or was that a new expression to you?

A. No, I have never used it as "lake locals." In fact, I understand the grain trade use- that statement but in railroad parlance these rates that we published, we call it the low non-transit rates on grain from Illinois points to Chicago because they are not confined to lake transporta-

tion. They are good for local consumption into Chicago on state traffic.

Mr. Enoch: That is all.

Exam. Taylor: Any questions by counsel? Any questions by counsel for the shippers? Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Mr. Rigg, does your line participate in the publication of the rates here under investigation?

A. No. The rates—not as line haul carrier. On reshipping rates from Chicago, for example, if that is what you are speaking of, to Eastern points we do not participate as a line haul carrier in those rates. We do participate as a switching carrier, of course, switching from the elevators to the Eastern lines, but only as an agent for the line haul carrier.

[fol. 503] Q. Is it your opinion that if these increased rates were today permitted to become effective it would reduce the volume of grain moving by barge on the Illinois waterways?

A. We hope that it will.

Q. Is that your interest in the proceeding?

A. Well, our interest in the proceeding, of course, is to recover and prevent further diversion of the grain traffic from our line to the barge lines; also, which is incidental to the proposition and probably important, is to remove the unjust discrimination which I have referred to.

Q. The proposition that you hope the movement by barge will be lessened?

A. Yes, sir.

Q. You think this proposal will have that result?

A. That is our earnest conviction, yes, sir.

Q. You mentioned that some of the elevators served by your line were hurt by the present adjustment. How is that, Mr. Rigg?

A. Well, I have had complaints,—I have been at this thing now for five years,—and starting at Minooka, Illinois,—Minooka is the first point east of Morris,—Minooka, Illinois, the elevator operator at that point says that he is losing money on every car of grain that he ships by rail

today and that he is only in existence there by reason of his coal and lumber business. I don't know whether he will testify or not. At Morris, Illinois our heaviest ship-[fol. 504] per there has been the Quaker Oats Company. They left us in 1939. Prior to that they shipped under our intrastate rates to Chicago but along about April the 19th the Quaker Oats Company advised me that they would not use our new state rates to Chicago because those rates were not as advantageous after the grain got to Chicago as what it would be if that grain had arrived at Chicago by boat or barge, in that the grain arriving at Chicago by barge would be good for transit under reshipping rates to Eastern points or to Southern destinations or by lake or for local consumption whereas our rates, our grain rates were confined to local consumption or in going out by lake, so that our rates were much less available at Chicago here than on the grain arriving by barge.

Q. Now, Mr. Rigg, pardon me. The question is about these local elevator people being hurt.

A. Well, I am just giving you how they are being hurt now. At Minooka here, I have told you about the complaints from them.

Q. They could not operate and make a profit——

A. At Seneca——

Q. —if they didn't have coal and lumber.

Mr. Enoch: Don't you want to hear what Mr. Rigg has to say about it?

Mr. Belnap: Yes.

The Witness: Now, at Seneca the elevator people,—two [fol. 505] of them on that one, McCormick and Hogan,—they tell us that unless we establish a rate of 3 cents per 100 pounds from Seneca to Chicago and that that rate has the same transit advantages at Chicago as the barge grain, that they will at some time in the future have to fold up or just be an accessory or a facility for handling barge grain. In other words, they will simply buy and sell barge grain.

Q. Where is the hurt, that is what I am trying to get to? That is their business, isn't it, buying and selling grain?

A. Yes, but I am advising now on their hurt, on what they have told me.

Q. Yes.

A. They won't continue in business down there. Now, of course, as long as the river elevator will continue to buy

corn and the rail elevator men continue buying and selling grain to be shipped to the river elevator, why, then, of course, he can continue in business at the usual two cents per bushel commission but just as soon as the river elevator, I presume, finds that he can get this grain without doing business or buying through a rail elevator then the rail elevator man is through, they will buy it direct from the farmers.

Q. That is the present day situation?

A. Now, Finnegan at Morris, as I understand it, is buying direct from the farmers.

Q. That is the present day situation, you are talking [fol. 505a] about an elevator on your line who is hurt by the fact that when the ex-barge grain gets to Chicago it can move east on the proportional or reshipping rates. I am just trying to identify the hurt from that showing and I don't understand you have explained to me where the hurt is yet.

A. Well, to the extent that this rail elevator shipper has to depend on the rail transportation via the Rock Island to Chicago he will be at a disadvantage in doing business to Eastern territory by a rail shipment out of Chicago so long as the barges,—as grain arriving in Chicago by barge can do business in Eastern territory.

Q. Well, how?

A. To the extent that his profits as a rail elevator man may be reduced.

Q. What reduces it?

A. I can't answer that question.

Q. Thank you.

A. Of course, that does not lessen my direct statement to the effect that the practice of the Eastern lines is unjustly discriminatory against the Rock Island Railroad.

Q. I didn't ask you about that.

A. That remains in the record. These grain people will be on here and can give you the rest of the story.

Q. So far as you are concerned you don't know how they are hurt?

A. No.

[fol. 506] Mr. Belnap: Thank you.

The Witness: Except from what they have told me, that is all, that they have got to have this same basis out of Chicago as the barges have.

By Mr. Root:

Q. Mr. Rigg, did I understand you correctly that the first intrastate rate was established in 1935?

A. In 1933 we put it in.

Q. What was the rate at that time?

A. Why, we made a rate from Morris, Illinois to Chicago, for example, a state rate of 6 cents a hundred.

Q. When did that go into effect?

A. It was in the year 1933.

Q. Well, has it been continuous since that time?

A. No, that rate carried an expiration date, it was an experimental rate. We were experimenting with the situation and I haven't got the exact dates here but it continued in effect off and on until the close of the year 1937. And then after 1937 the rate from Morris to Chicago was made 5 cents intrastate and that applied as a maximum from intermediate points on intrastate traffic. On complaint of certain elevator shippers located west of Morris the Illinois Commerce Commission found that that 5 cent rate was prejudicial to the shippers west of Morris and preferential to Morris and ordered the undue prejudice removed and we removed it by cancelling the 5 cent rate and getting out of the business, having nothing left except the interstate [fol. 507] rate of 9½ cents from Morris to Chicago and then we lost so much grain from that territory to Chicago we decided on April 19, 1938 to put in a new state adjustment from our Illinois points as far west as Sheffield, Illinois to Chicago to meet this barge situation, trucks and barges combined, to Chicago. Those rates are still in effect.

Mr. Brown: Mr. Rigg, you said "1938". Didn't you mean 1939?

The Witness: I should have said 1939. April 19, 1939, and those rates are published to expire June 30, 1940.

By Mr. Root:

Q. When that rate went into effect in 1933 that was a short rate, wasn't it, it was effective for a short time?

A. No, that rate carried an expiration date, as I recall it in those days, of December 31st, 1933 or 1934, but we continued to extend that expiration date up to probably to, in one instance, where it was not extended,—but up till December 31, 1937 that rate was substantially continued in effect except for a period in the winter. We assumed that

the navigation on the Illinois Deep Waterway would be closed but after letting the rate go out we found that they are not affected and instead of the river being frozen up it was very much open because of the current being taken care of by the locks. Whenever it started to freeze they poured water into the locks through the channel and I understand in that way they kept it open all year.

[fol. 508] Q. Do you know whether or not the interstate rates put into effect by the Alton, Santa Fe and perhaps Burlington went into effect about the same time as yours or at a later time?

A. Do you mean the last ones?

Q. When did they first start establishing an interstate rate?

A. I think when we put in our rates in 1933 I am quite sure that the other lines met our competition cross country.

Q. At whose request did you put in those rates?

A. At whose request? You mean from Rock Island points?

Mr. Enoch: I don't think that is a question——

Mr. Root: Yes.

Exam. Taylor: Wait a minute.

Mr. Enoch: I don't think that is going to help the Commission solve the questions at issue here.

Mr. Root: I would like to say here that many elevators requested the Rock Island and other roads to give them a rate at which they could compete and it was only after repeated attempts that that was done.

Exam. Taylor: Witness may answer if he knows.

The Witness: I stated in my direct testimony, Mr. Examiner, that the adjustment which we made in 1933 was a voluntary adjustment. It was based on our own damage, it was based on the experience of other railroads, that when this waterway was opened that we were going to be up against competition.

By Mr. Root:

Q. Was Mr. Allen of the Square Deal Grain Company [fol. 509] over in your office in company with other men to request a reduction in rates at that time?

A. I talked with Mr. Allen along in 1935 or 1936 in his office at Morris and at that time he indicated that a

rate of 6 cents which we had in effect was no good and would not move the business. Now, prior to 1933,—I just can't recall the facts whether he was in or not. We certainly would not reduce any rates prior to 1933 with no competition from that territory. I appreciate we had competition from Morris when the river was opened from Morris west towards Peoria, where the grain was transported prior to 1932 by barge southbound but it did not come into Chicago because the channel was not opened till 1933 for movement to Chicago.

Q. Why is this grain shipped over the waterways now from those towns rather than going over the Rock Island?

A. Well, they have got an advantage in rates here so far as the corn traffic is concerned over the rail lines.

Q. As a matter of fact, it is cheaper transportation, isn't it?

A. No, I am not going to admit that point.

Mr. Enoch: Just a moment. Now, let's see what you mean by "cheaper transportation." You mean to whom,—the public? Do you mean to the public or to the individual user of the transportation?

Mr. Root: It costs you less to transport grain from Morris to Chicago by barge than it does by rail.

[fol. 510] Mr. Enoch: You mean to the individual?

Mr. Root: To the man that ships it.

Mr. Enoch: But not to the public. You don't mean that, do you?

Mr. Root: Sure. Of course the public uses the waterway. It is there for everybody to use. The Rock Island can use it if they want to.

Mr. Enoch: I am sure you don't mean it is cheaper for the public to use it.

Mr. Root: You may prove it; I don't know.

Exam. Taylor: Is that all you have, Mr. Root?

Mr. Root: That is all I have.

Exam. Taylor: Any more questions of this witness?

By Mr. Macaulay:

Q. You mentioned that you put the six cent rate into effect in 1933 at Morris?

A. Yes.

Q. What grain was being shipped out of Morris by barge at that time, do you know?

A. As I recall it there was a southbound movement of grain from Morris to Chicago and points south, mostly in the Mississippi Valley.

Q. Did that justify changing the rate then to Chicago to six cents if there was a southbound movement?

A. The channel was opened up to Chicago in 1933 and in 1933 was when we felt that unless we did something [fol. 511] with the local situation from Morris to Chicago that we would lose our grain, so we, therefore, knowing we would have barge competition which later developed, we established a rate of 6 cents from Morris to Chicago. Now, as a matter of fact the Federal Barge Line in 1933 published from Morris to Chicago a rate 80 per cent of our 6 cent rate, which made it 4.8 cents, but the Federal Barge have folded up on this traffic. They could not stay in it, as I understand it.

Q. Do you know of any elevator that was located in Morris on the river in 1933 that was shipping by barge?

A. Well, I don't know whether Finnegan was over there at Pattonville or not, across the river from Morris: on the other side.

Q. In Pattonville?

A. I don't know where he was. I know there was grain moving south then from Lacon and Henry. As I recall, this grain was moving out of Morris to points south prior to 1933.

Q. Wasn't it a fact that Mr. Finnegan did not erect his elevator until sometime in 1934 and did not ship until that time?

A. No. As I recall it there was grain moving out of that territory down the river southbound, not eastbound, prior to 1933. I may be mistaken now.

Q. You mentioned about shipments that you were being deprived of because of the trucks. When was the first that you began to notice the influence of the trucks on the tonnage that you handled?

[fol. 512] A. Well, as our figures show here when the situation got real bad was—my exhibit number 14, the exhibit speaks for itself. You take 1937, Minooka, only 107 cars. Morris did pretty well. The Quaker Oats were staying with us then.

Q. What year was that, sir?

A. 1937.

Q. In 1933 what was the condition compared with 1932 or 1931?

A. In 1933, as I stated in my direct testimony we did not commence to really feel this barge competition in a big way until along about 1935.

Q. Then you cut this rate not on account of competition but in anticipation of competition?

A. We cut the rate in 1933, we knew there would be barges going in there, and I stated in my direct we held pretty well against the barges in 1933 and 1934 but in 1935 we commenced to lose ground and we have lost ground ever since.

Q. Are you prepared to state whether or not the 5 cent rate to Chicago is compensatory to the Rock Island?

A. Whether the rate is compensatory?

Q. Whether it equals your cost?

A. The Illinois Commerce Commission has already found that a rate of 5 cents was not unreasonable.

Q. Pardon me, I did not hear. Was not a reasonable rate?

A. Was not unreasonable.

Q. Was not unreasonable. But you cannot state whether [fol. 513] or not it covers your costs?

A. I don't know what it costs to handle any traffic, that is to say, any individual traffic, railroad traffic. I can make a guess at it; I know whether we are making money or not.

Q. Do you know whether or not there is any likelihood that the tariffs will be extended beyond June 30, 1940 on this interstate billing?

A. If it is within the power of the CRI&P Railway, why, those tariffs will be extended. In other words, we are going to continue to meet our competitions to the extent that we can and I say within our power. There are other powers, of course, in connection with this matter, such as the regulatory bodies and others.

Q. Do you anticipate that if your reshipping rates are denied barge grain that there will be any increase in the amount of grain that will be trucked to Chicago?

A. It is our earnest conviction that that is one of the things, if not the most important thing now, that is causing us to lose so much of this grain to the barges, which is in effect clarified by our rates of April 19, 1939 in an effort to meet this barge competition. The answer is yes.

Q. In other words, the trucks won't take anything away?

A. The trucks do not truck anything direct from our Illinois points to the Chicago territory; they are trucking from our Illinois points to these elevators, where it is moving by barge.

[fol. 514] Mr. Macaulay: That is all.

By Mr. Root:

Q. Would you be surprised to know that the gentleman in Morris spends his full time buying grain direct from the farmers and that it is trucked direct to the terminal elevators in Chicago?

A. I was down there two weeks ago, three weeks ago and saw Mr. Robinson, or called on him, of the Allied Grain Company there, he runs the river elevator at Morris, and he brought corn from I think as far west as Ottawa, and while at the Morris elevator I saw probably half a dozen trucks waiting to be unloaded with grain at the river elevator at Morris and those trucks, some of them came, at least two of them came from a point on the Burlington probably fifteen or twenty miles north of Morris, from Somonauk or some point like that, and traveling almost right out down to Seneca there was grain being trucked and passing us all the way, or corn being trucked all the way to the river elevator at Morris. I can't see that there is any advantage in trucking the grain from that territory to Chicago by truck all the way when the barge is willing to handle it, as I understand it from such information as I can get, at a towing charge from Morris to Chicago of a cent a bushel.

By Mr. Macaulay:

Q. My question was whether or not if the reshipping rates were denied barge grain, whether, in your opinion, there would be any increase in the movement of grain which would then be trucked to Chicago, the barge grain being eliminated?

[fol. 515] A. As I stated to you, we are going to meet our competition to that territory so far as we have the power to do so and that meeting that competition refers to any kind of competition, whether it be by barge or truck and my answer is "No", because it is easier to meet the truck situation than probably this barge situation.

Exam. Taylor: Is that all your questions, Mr. Macaulay?

Mr. Macaulay: Yes.

Exam. Taylor: Mr. Childe?

Mr. Childe: No questions.

Exam. Taylor: Any further cross-examination of this witness? Anything on redirect?

Mr. Glover: I want to ask him one question.

Q. As I understand your testimony, both on direct and cross, it applied only to whole grain?

A. Well, my testimony shows the interest of the Rock Island in this case and it is primarily, of course, in the territory that I am speaking of on the corn but so far as the testimony goes, the statement that the situation discriminates unjustly against the Rock Island, that is to say, the eastern rates applying on barge grain, applies equally with respect to corn or the products of corn or anything which may take the grain or grain products rates, because the same principle is true of corn east of Chicago as is likewise true of any article taking the grain or grain products rate.

Q. Yes, but I mean your particular testimony that you [fol. 516] put in on direct and cross applied to the whole corn, did it not?

A. It goes to the whole thing, to the whole eastern practice. We are interested, for example, in hauling this ground alfalfa from Kansas City to Chicago. Now, I think that is what you are interested in. We are interested in now seeing that they stop the practice by rail and not by barge.

Q. Now, will you answer the question? I asked you whether or not your testimony on direct and cross up to my question, whether that was directed at the whole grain?

A. No.

Q. It applied to products, isn't that right?

A. It applies to all of it, yes, sir.

Q. And your testimony of this trucking applied to products, too, into Chicago?

A. Well, my testimony with respect to trucking is incidental to the main issue here. I was asked some questions about it and, naturally, the traffic that is trucked to Chicago is whole grain.

Q. That is what you are talking about?

A. In my answer on cross-examination, where I spoke about trucking it, there is a trucking of the whole grain to the river elevators or the whole grain to Chicago.

Q. So your testimony referred to the whole grain, as I understand it?

A. My cross-examination referred to the whole grain.

Q. And to the extent your testimony on direct, where you stated "other than corn", you meant, of course,—and [fol. 517] where you limited it to corn, it was applicable only to corn?

A. Where I limited it to corn was applicable only to corn, the whole corn into Chicago, but the testimony shows the effect on the CRI&P whole grain movement to Chicago, that is to say, the effect on that movement by reason of the practice of the eastern lines applying their reshipping rates on barge grain. Now, their reshipping rates that they apply on this whole grain that is brought into Chicago apply on the grain or the product of grain. Now, my testimony with respect to this unjust discrimination created by the eastern lines' tariff, this practice which they have, applies with equal force to corn from Illinois or wheat from the Missouri River, corn from Iowa or ground alfalfa or hay products from points in Kansas City or any states west thereof.

Q. So that the testimony that you gave as to rates via the barge line or your competition with the barge line applied to what,—that is, from Seneca and Morris and those other points? What competition did you have in mind there?

A. Relating to the immediate effect that I testified to here, but on our traffic I relate to corn traffic from our Illinois points to Chicago.

Q. So your testimony is mainly as to corn into Chicago?

A. Oh, no.

Q. Why not?

A. Well, I think it will speak for itself.

Mr. Glover: All right.

[fol. 518] By Mr. Bradford:

Q. Mr. Riggs, in reply to Mr. Macaulay's question I believe you stated you did not see why a man would truck grain to Chicago when he could truck to the river elevator. I would like to ask you if that answer was based on the fact that the barge line grain would have the benefit of this

reshipping rate and the trucks would pay the full local rate going out by rail?

A. That is one advantage, yes, sir.

Mr. Bradford: That is all.

Exam. Taylor: Anything further on that side? Redirect?

Redirect examination.

By Mr. Enoch:

Q. Mr. Rigg, Mr. Belnap endeavored to get you to say that your sole interest in this proceeding was to reduce the movement by barge and I would like to ask you whether or not a greater interest than that is not that the Rock Island, the railroad which you represent, and other railroads here will handle more than they do rather than to beat the barge line out of any business that they might have?

A. The answer to that is "Yes", and, of course, it goes a great deal further than that, Mr. Enoch, as I stated in my direct testimony. If we continue to lose our grain traffic in Illinois, corn traffic to the barge line, and there is no corn traffic left to be handled through the rail facilities, why, eventually, in my opinion, the rail facility will dry up and some day when there is a possibility of a good corn movement by rail there will be no facility with which to handle [fol. 519] that grain through to load it into cars. There is quite an investment down there in those facilities.

Q. Now, how is that territory served by the Rock Island and these other railroads in Western Illinois? Take towns like Geneseo on the Rock Island, and Bureau County, and the C. B. & Q. and these other railroads as to being a heavy producing territory of corn?

A. Well, practically all of the counties along the Rock Island main line,—in fact, all of the Rock Island lines in Illinois are surrounded by very heavy corn producing territory all the way to the Mississippi River and right on through to Omaha, as far as that goes, and through Iowa.

Q. Now, you as a representative of the Rock Island are interested in handling corn from those points in Illinois beyond this waterway, are you not?

A. Yes, sir.

Q. And the other railroads are interested in the same competition?

A. Yes, sir.

Q. Do you recall when it was that you first had experience with this barge line business down the Illinois River to St. Louis and Memphis on corn?

A. Well, from our points the real competition that we have there, or the loss of grain which we suffered was in the vicinity of Lacon and Henry and there was some grain [fol. 520] being handled out of that territory and that was, as I recall it, prior to 1933.

Q. That is right. Now, it was that experience, was it not, that led you to believe that if anything was to be done in connection with this eastbound movement it ought to be done right at the time that the movement was about to start?

A. That is right. It not only led me but it led our entire management to that conclusion.

Mr. Enoch: I offer exhibit number 14 in evidence.

Exam. Taylor: It will be received.

(Exhibit 14, Witness Rigg, received in evidence.)

Mr. Cole: I have one question.

Q. Mr. Rigg, do you have elevators on your line in Illinois that are only rail elevators, that do not have any water immediately adjacent to the elevator?

A. Yes, sir. Take at Minooka, Illinois, of course the rail elevator there is rail locked. In other words, the water is not available. At Morris the Quaker Oats Company have an elevator and that is served only by rail facilities. The Square Deal Grain Company have an elevator which is served only by rail facilities.

Exam. Taylor: At Morris, too?

The Witness: At Morris. Now, the Allied Cooperative Elevator, which is on the river, that is to say, it is a river elevator, we have a track into that elevator but very little grain,—in fact, the only grain, as I recall, that we had out [fol. 521] of there this year was a few cars during the time that the Commodity Credit Corporation released quite a lot of grain in the vicinity of Morris and there wasn't sufficient barges available to handle the grain and we got a few cars of grain out of Morris to Chicago this year because of that condition.

Q. Are you familiar with the Square Deal elevator at Morris?

A. Well, only to the extent that it is served by a Rock Island track.

Q. Do you know what use is being made of that elevator?

A. The last time I was in Morris I made inquiry as to what was stored in there and I was told that the Square Deal Company had government grain storage in that elevator under seal.

Q. Have you had any tonnage out of that elevator while this storage is in there under seal from the government?

A. We haven't had any out of there lately. There was one period, it was along in August or September, when something happened down there, when the Commodity Credit Corporation let loose quite a lot of corn which was under seal to Chicago and that caused a little movement from Morris. As I show here the entire year there was 44 cars. I think there were 19 cars, if I remember right, that we got from Morris under that particular release of corn from seal during September or August.

Q. Now, if this rail rate from your rail elevators in Illinois that do not have the water outlets that you referred to just previously continues and if the water rate continues [fol. 522] from those elevators that have the water outlet, how will that continued difference of application of charges affect those elevators that are now on your line that only have a rail outlet for their grain?

A. Well, this statement that I have shown of our tonnage movement here, our business is decreasing and that is because the rail elevator business is decreasing.

Mr. Macaulay: What is that last answer?

The Witness: I say that the business off our line is decreasing because the business in the rail elevator served by our rail line is decreasing.

Mr. Macaulay: The business of that elevator for rail shipment?

The Witness: Yes, for rail shipment.

Mr. Macaulay: That is all you are talking about?

The Witness: That is all I am talking about, Mr. Macaulay. Now, the other angles of this thing, as to what extent that rail elevator may be buying and selling grain for the river elevator on a commission basis, I know nothing, or in

handling grain through that elevator but simply handling it direct by truck from the farm to the elevator I cannot tell, but I do know this that eventually, as far as the railroad is concerned, at least if this particular condition continues, that we probably will be handling no grain from that territory to Chicago.

By Mr. Enoch:

Q. Well, are you through, Mr. Rigg?
[fol. 523] A. Yes.

By Mr. Cole:

Q. Well, Mr. Rigg, the grain elevator that is on the rail line and has no outlet by water and this new handling that you referred to, that that elevator company may be buying grain for direct delivery to the river, do I understand you to indicate that there is no movement whatever of the grain through the elevator on facilities that are located only on the railroad track? Are people putting grain up in the railroad elevator?

A. That is true in some cases.

Q. What do you mean that is true, which?

A. It is true, for example, as to the Quaker Oats at Morris, Illinois.

Q. What is true?

A. Why, it is true that the farmer, for example, will—that the Quaker Oats Company will buy grain at Morris, Illinois and that grain will be trucked from the farm to the Quaker Oats Company's elevator served only by rail facilities on our line at Morris. Now, then, the Quaker Oats will truck that grain from our elevator, or the elevator on our line to the river elevator of Finnegan Bros. across the river at Morris. Now, then, that stuff will be barged into Chicago. Now, at Seneca, for example, the two grain dealers there both buy grain from the farmer which is carried into their elevator by the farmer and that stuff generally is shipped out by rail. They also buy grain direct from the farmer which never sees their elevator but instead [fol. 524] moves direct to the river elevator for shipment via barge to Chicago.

Mr. Cole: That is all, thank you.

By Mr. Enoch:

Q. Well, now, Mr. Rigg, to the extent that the rail elevator does business with the river elevator it is going out of business, isn't it?

A. They tell me they are; that is the best I can say.

Q. Well, now, take your rail elevator at Seneca, Illinois: If the man running that elevator is buying the grain from the farmer for the river elevator does the grain that he buys go through the rail elevator or does the farmer take it direct to the river elevator?

A. What point was that?

Q. Seneca.

A. That particular grain that he buys for the river elevator does not move through the rail elevator at Seneca.

Q. Isn't it true that all of your rail elevators except the Quaker Oats elevator, who happen to be a large merchandiser at Morris,—isn't that true with all of them?

A. No, this is quite a combination. Now, let me give you another situation.

Mr. Belnap: Mr. Examiner, I think counsel is trying to tell him something and is not asking him anything.

The Witness: I want to tell you one situation at Morris, if I may. Finnegan Bros. or the Finnegan Company at Morris have a rail elevator on the Rock Island which is used [fol. 525] for storing grain and that grain is trucked from the elevator to their river elevator of Finnegan's for shipment by barge beyond but any grain they have——

By Mr. Enoch:

Q. How many points have you got on the Rock Island Railroad down in Illinois where you have a rail elevator man getting a commission for buying corn from the farmers for a water elevator man where that grain goes through the country elevator before it goes through the elevator on the water?

A. None of them.

Q. So that when Mr. Belnap jumped at you a while ago you did not mean to change the answer which caused him to jump, did you?

A. No, I was trying to differentiate. The way the question has been put to me, you finally cleared it up on your last question. The question that was asked, the way the

questions were put to me were, even if this grain moves from the country which the rail elevator man might buy for the river elevator, does that move through the river elevator—or the rail elevator? And the answer is "No".

Mr. Belnap: The answer is "no" to what?

The Witness: That it don't move through the rail elevator.

Mr. Enoch: Just a moment. I think that is clear on the record.

Exam. Taylor: Does that finish your redirect?

Mr. Enoch: Yes.

Exam. Taylor: Anything on recross?

[fol. 526] Mr. Belnap: Yes, I have a question.

Recross-examination.

By Mr. Belnap:

Q. What have you now cleared up, Mr. Rigg? I am lost on the road.

Mr. Enoch: I object to that kind of cross examination.

Mr. Belnap: All right, I withdraw that question.

Q. Have you changed your answers from those you gave me when I asked you about this certain river elevator and you told me you did not know?

Mr. Enoch: I object to that unless Mr. Belnap wants to know now whether or not he has the correct answer to the same question that he asked Mr. Rigg. That is too general and I object to asking Mr. Rigg that question.

Mr. Belnap: The difficulty is there, Mr. Examiner, counsel has been making a long statement to him and tried to get him to agree with something and sometimes he would hedge away from it and sometimes he would agree with it.

Exam. Taylor: Well, you had your opportunity to object to the leading questions.

Mr. Belnap: Yes, I had the opportunity.

Mr. Enoch: You had the same thing applied to you.

Mr. Belnap: I absolutely am not clear on the proposition of whether or not Mr. Rigg has stated whether or not the rail elevator man would be hurt or said something different. At one time he told me he didn't know where the hurt would be. Now, I don't know whether I am talking about

the same subject or not and I would like to have it from [fol. 527] the witness.

Mr. Enoch: I have no objection to your asking about that.

The Witness: You are not speaking as to the future now. You are speaking as to a rail elevator man doing business on grain today.

By Mr. Belnap:

Q. That is right. Is he hurt by the present adjustment?

A. I can't answer your question as to what extent he is hurt.

Q. Do you know whether he is hurt at all?

A. No, I don't know whether he is hurt at all.

Mr. Belnap: Thank you.

Mr. Enoch: Now, right in that connection may I ask this question——

Mr. Belnap: I object to any further questions on redirect going over the same ground and telling the witness these things over and over again.

Mr. Enoch: Now, Mr. Belnap, I hadn't intended to tell the witness anything and I will agree with you that if you find any question in that record where that appears that it may be stricken out and the answer, too. Now, I would like to ask Mr. Rigg just one question:

Q. What is this country elevator man doing with his elevator and what is he going to do with it if he acts as a commission man solely for the water elevator man?

A. He isn't going to use it.

Q. Do you think he is hurt?

[fol. 528] Mr. Belnap: I object to that. You can't lead your own witness.

Mr. Enoch: I withdraw it.

Exam. Taylor: The question is withdrawn.

Mr. Cole: That question that he asked is withdrawn?

Exam. Taylor: Yes.

Mr. Cole: But now, I really, for the purpose of making it clear to the Commission,—and, if you are satisfied, Mr. Examiner, I will sit down,—but I patiently tried to ask this witness something to get just a plain answer. Now, all I want is the actual fact, that is all I want, I don't know

what answer he is going to give but I would like to get the record clear on this point. He answered me two questions when I went into detail on my examination; I think Mr. Rigg will remember those questions. I asked him what was——

Exam. Taylor: Well, are you satisfied with his answers?

Mr. Cole: I am satisfied with the answers that he gave me, yes, sir.

Exam. Taylor: All right.

Mr. Cole: With the answers that he gave me but I cannot understand how he could answer those questions to me the way he did and answer Mr. Belnap the way he answered Mr. Belnap. I can't understand how he can again answer me the way ray he did and answer Mr. Belnap the way he did.

Mr. Belnap: Mr. Examiner, I think he ought to be permitted to explain his answer.

[fol. 529] The Witness: I will explain it to clear up the question.

Mr. Cole: May he?

Exam. Taylor: Yes. If there is any fog in the record let us get it out.

Mr. Cole: All right.

The Witness: As I understand it, Mr. Cole, when the rail elevator man at Seneca buys grain for the river elevator he is allowed two cents a bushel commission.

Mr. Belnap: Do you know that, Mr. Rigg?

The Witness: He is allowed two cents a bushel commission, as I understand it. Now, that is about all that he can make on grain which he buys from the farmer and handles through his elevator and ships to Chicago direct, two cents a bushel.

Exam. Taylor: Does that clear it up now, Mr. Cole?

Mr. Cole: I will take his answer. It is not clear to me, no, sir.

The Witness: What difference does it make? If it pays a man to make his two cents a bushel what difference does it make whether it goes through the rail elevator or the river elevator? Now, that is what my answer to Mr. Belnap is predicated on. I hope I have made it clear.

Mr. Belnap: That is all.

Mr. Cole: Thank you.

Mr. Day: In other words, Mr. Examiner, it would mean that this investment in the elevator and the elevator prop-
[fol. 530] erty and the elevator facilities is worthless.

Mr. Belnap: I object to that.

Exam. Taylor: Objection sustained.

The Witness: I made a statement as to the future—excuse me.

Mr. Day: Well, there is a conflict. His testimony certainly is not clear on that point, Mr. Examiner. The way it stands in the record now it doesn't mean a thing; that he has this tremendous investment in the elevator and the important apparatus and machinery that is necessary to have in an elevator. There are probably hundreds of thousands of dollars.

Exam. Taylor: It is perfectly clear to me.

Mr. Day: According to the witness' answer it doesn't mean anything. He can go out and do business in his hatband and make just as much money as he can with the elevator property. That certainly is not clear.

The Witness: Can I make another statement to clear it up?

Exam. Taylor: If you can clear it up.

The Witness: What I want to say to you is this: If you are speaking about the future, whenever the river elevator man gets ready to deal and the rail elevator man says, "I am not going to do business with you any more, I am going to do business with the farmers direct," then the river elevator man is washed up. Mr. Belnap was asking me about today and you are asking me about the future,
[fol. 531] that is the difference. As I understand you, Mr. Belnap, that is in the future.

Mr. Belnap: On a given set of circumstances which you don't know is going to happen.

The Witness: No, I don't know whether it is going to happen.

Mr. Macaulay: I have a question.

Q. Now, you state that the elevator man now gets a commission of two cents per bushel and he does not run the grain through his facilities. Did I understand you correctly?

A. That is my knowledge of it as far as I have been able to get it.

Q. Are you able to state how much more he would have to charge for himself if he handled it through his facilities?

A. No, sir.

Q. It would be more than two cents, would it not, in order to net him two cents?

A. I don't know.

Q. Well, it would be presumed that a handling charge would require some help and some electricity and——

Exam. Taylor: The witness answered he doesn't know, Mr. Macaulay.

Mr. Macaulay: All right.

Q. What facilities do you have at Morris, Illinois?

Exam. Taylor: In what way was this brought out on cross examination?

[fols. 532-536] Mr. Macaulay: He stated, Mr. Examiner, that the railroads had large investments at these various points and if the barge shipments continued these large investments will be wiped out and I am wondering what large investments they have in Morris, Illinois?

A. What we have?

Q. Yes.

A. We haven't got any investments in elevators at Morris, Illinois.

Q. Do you have a side track, several side tracks?

A. A side track, yes, but nothing in elevator facilities.

Mr. Macauley: That is all.

Exam. Taylor: Is that all from this witness? Witness is excused.

(Witness excused.)

Exam. Taylor: At this time we will adjourn until 9 o'clock tomorrow morning.

(Whereupon, at 5:10 o'clock p. m., the hearing was adjourned until 9:00 o'clock a. m., Wednesday, December 20, 1939.)

[fol. 537] Chicago, Illinois,
Wednesday, December 20, 1939.

Before R. G. Taylor, Examiner

Hearing Resumed at 9:00 o'clock A. M.

Appearances: As heretofore noted.

PROCEEDINGS

Exam. Taylor: Proceed.
Mr. Enoch: Mr. Behrle, please.

J. A. BEHRLE, was sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Give your name to the reporter, please.
A. J. A. Behrle.
Q. You are located in Chicago, Mr. Behrle?
A. Yes.
Q. With what carrier?
A. I am General Freight Agent of the Alton Railroad.
Q. In the traffic department, of course?
A. Yes.
Q. How long have you been in the traffic department?
A. 36 years.
Q. During that time have you had to do with rates and [fol. 538] traffic matters and particularly grain rates, grain traffic?
A. Yes, sir.
Q. Did you distribute an exhibit here yesterday?
A. I did.

Exam. Taylor: Off the record, identify these exhibits.

(Discussion outside the record.)

(Exhibits 15, 16 and 17, Witness Behrle, marked for identification.)

By Mr. Enoch:

Q. Mr. Behrle, were Exhibits 15, 16 and 17 which you have just identified prepared by you or under your direction?
A. They were.

Q. Are the facts purporting to be stated thereon correct?

A. To the best of my knowledge and belief.

Q. Will you proceed to explain Exhibit 15.

A. Exhibit 15 is a statement showing the corn production by counties for the years 1931 to 1938, inclusive, in bushels; the counties are Will, Grundy and Livingston, in Illinois. These figures are taken from the reports of the Department of Agriculture of the State of Illinois, who operate in conjunction with the Federal Department of Agriculture. The figures for the year 1939 by counties are of course not yet available. But the estimated corn production for 1939 indicated Illinois is 504,236,000 bushels, as contrasted with 464,923,000 bushels in 1938.

[fol. 539] In the next exhibit, numbered 16, we have shown the number of carloads of corn to Chicago via the Alton Railroad during the calendar years 1932 to 1938, inclusive, and the first eleven months of 1939. Included in this movement is some white corn which ultimately finds its way to cereal mills. White corn, as distinguished from yellow corn, comprises 10 or 15 per cent of all corn. Several tests that we have made of corn loadings on the Alton Railroad indicate that they will average 95,000 pounds.

Exhibit 17 is a statement showing the relationship of production and movement during the years 1933 to 1939, inclusive. I would like to explain that we have used as a basis, starting with 1931—'32, the average production by counties for the year 1931 and 1932. The succeeding years have been worked out on the same basis. That is, the figures shown for 1933 were computed on the average of 1932 and '33 and so on.

Now, as I previously related, we do not have the figures by counties for the year 1939. The 1939 figures were therefore computed on the relationship of the corn production in 1938 as related to 1939 for the entire State of Illinois. That is the only way in which we could arrive at the figure in order to complete the picture. The movement to Chicago during the years 1932 to 1939 was actual, except for the month of December, 1939, which has not as yet been completed. And for the December figures we took the [fol. 540] movement in November, which I think is fair and reasonable. If anything, the movement in December is lighter than in November, as a rule.

In connection with this exhibit, I direct particular attention to the showing from Gardner and Dwight, which indicates that while in the year 1932 we start off with 100 per cent, we terminate in 1939 with 19.6 per cent from Gardner and 29½ per cent from Dwight.

I wish to make this further statement. The Alton Railroad operates lines in both Illinois and Missouri. It is one of the major railroads in Illinois and serves the three largest cities, Chicago, Peoria and East St. Louis. It is the shortest route from Chicago to St. Louis. The line from Chicago to St. Louis is via Joilet, Bloomington, Springfield and Alton.

In Exhibit 16, the stations Elwood to Cayuga, are on the main line of the Alton Railroad between Chicago and St. Louis. Nevada, Blackstone and Smithdale are on the line running west from Dwight to Washington, which is a branch.

The Alton Railroad is the successor to the Chicago & Alton Railroad. The Chicago & Alton Railroad, although serving a splendid territory was in financial straits for years and went into receivership in 1922, where it remained until 1931, when the Alton Railroad took over the property. Although the Alton Railroad is well managed, it too has had great difficulty in enduring and has been compelled to forego payment of its bond interest on three occasions in the last year and a half. Neither the Alton Railroad or [fol. 541] its predecessor paid a stock dividend in over 30 years. Both have contributed handsomely to taxes in the State of Illinois. I make mention of this to indicate the necessity of most serious consideration of our revenue requirements.

The current system of through rail rates to the western termini, roughly the line from Buffalo to Pittsburgh and east, has been in effect for more than 30 years. Under this plan, so-called "specifics" were graded south from Chicago to central Illinois. This central Illinois group was of sizable proportion. These specifics were added to the reshipping rates from Chicago. The through rates thus arrived at were applied via Chicago and the interior markets. This adjustment was, in the main, highly satisfactory.

In 1910 the Illinois railroads proposed an increase of 1 cent in the specific proportions. After a hearing before

the late Commissioner Prouty, in the suspension proceeding which followed the filing of the increased rate tariffs, the increase was permitted. I refer to these situations as indicating that this is not a new situation with the Interstate Commerce Commission and that the subject has been discussed on several occasions at considerable length.

In another proceeding, the Peoria Board of Trade case in 1918, I believe, the Commission upheld the adjustment. A discordant note was struck in 1933 when barge competition [fol. 542] at Morris was threatened. Twenty miles south of Morris and connected by good roads are the stations of Gardner and Dwight on the Alton Railroad, which for years had enjoyed the same rail rates to Chicago and east as Morris. Almost immediately, we were besieged by the elevator operators for some measure of assistance to protect them against the invasion of their territory by the barge operators on the Illinois River. The contention was that the rate advantage to Chicago, at that time the rate of the Federal Barge was 4.8 cents to Chicago—the Federal Barge Lines also carried a 4 cent rate to St. Louis—grain would be attracted from the territory served by the elevators at Gardner and Dwight and the vicinity to Morris.

Now, as a result of the deliberations in the many conferences with these elevator people, we made a reduction in our rates effective June 10, 1933. I don't want to take up too much time, but I do want to give you these figures. I will call first the rate that was in effect on June 9th, and then the rate on June 10th:

Elwood, 9, 6½; Wilmington, 9, 7; Gardner, 9½, 7½; Dwight, 9½, 8; Odell, 10, 9; Cayuga, 10, 9½. From stations on the Dwight line, Nevada, 9½, 8; Blackstone, 9½, 8; Streator, 9½, 8.

Now, I will also give the present interstate rates and the rates which are published for application on state traffic with no transit at Chicago. The first will be the interstate [fol. 543] rate, the second the state rate: Elwood, 8½, 5½; Wilmington, 9½, 5½; Gardner, 10, 5½; Dwight, 10, 6; Odell, 10½, 7; Cayuga, 10½, 8; Nevada, 10, 8; Blackstone, 10, 6; and Streator 10, 7. The rates in the year 1933 were carried in Alton Tariff 1604-L, I. C. C. 30. The rates in 1939 are shown in Alton Tariff 1604-O, I. C. C. No. 208.

Now, incidentally, I mention that the readjustment which

has taken place on state traffic has resulted in a disruption of the differences as between shipping points; and that situation has caused both the elevator operators and the railroads considerable concern. It will be noted, for instance, that Gardner and Dwight both had a rate of 9½ cents on June 9, 1933; that the rate from Gardner is now 5½ and from Dwight 6 cents. Now, Odell had a rate of 10 cents. The spread between Dwight and Odell was ½ cent. Odell now has a rate of 7 cents; the spread is 1 cent. Odell and Cayuga both enjoyed the same rates. The rate from Odell is now 7 cents, the rate from Cayuga is 8 cents; there is a spread of 1 cent.

Now, since 1933, every elevator operator on the Alton Railroad from Joliet on the north to Chenoa on the south and from Nevada to Cazenovia on the Dwight line, has complained about the effect of the barge competition, and in some instances arrangements have been made by elevator operators with the barge line operators under which the former act as an agent; the purchase of grain for movement beyond Morris by barge. I mention Morris because [fol. 544] that has been the principal seat of our competition.

By Mr. Belnap:

Q. Just to make that clear, what is the relation of the parties in that transaction?

A. It is a relationship between the elevator man on the Alton Railroad and the elevator man on the river.

Q. And you said one was an agent of the other?

A. Yes.

Q. Which one is the agent?

A. The elevator man on the Alton Railroad. And all of these operators have complained of the serious inroads made on them by reason of the barge competition with which they had been confronted. Their complaint is that the spread as between the rail rate and the charges paid for barge movement is sufficient to enable the barge operator to invade their territory and to take from them the grain which formerly moved through their elevators via rail.

That completes my statement.

Exam. Taylor: Any questions? Questions by counsel? Any questions on the other side? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Mr. Behrle, does your line support the suspended schedules in the hope and the belief if they would become effective, it would reduce the tonnage of grain moving by barge on the Illinois waterways?

[fol. 545] A. We are hopeful that we may recover some of the traffic we have lost.

Q. Well, in using that phraseology do you mean that you hope that the movement of grain via barge would be reduced?

A. I think it will, and in that way it will benefit both the railroads and the rail operators.

Q. The railroads and who else?

A. And the rail elevator operators.

Q. In your view of it, is there something fundamentally wrong with transporting grain by water, so that it should be discouraged?

A. I think there is something fundamentally wrong with that whole picture.

Q. I didn't ask you about the whole picture; I just asked you about the transportation of grain by water. Is there something wrong, fundamentally, with that sort of transportation service and that it should be handicapped and discouraged?

A. I don't know that I get the point of your inquiry. If Mr. Belnap's inquiry is as to the point of whether or not I think the present system on the Illinois waterway is fair and reasonable, I will say no.

Q. Why?

A. Because we are in competition with an uncontrolled, unregulated industry that does not pay its way.

Q. What do you mean by "uncontrolled"?

[fol. 546] A. No regulation of it.

Q. "Uncontrolled" and "unregulated" you use in the same sense?

A. Yes.

Q. As I understand it, as to that matter you think because Congress has not as yet seen fit to regulate the port-to-port transportation of grain on these inland streams, that transportation by that means should be discriminated against, handicapped and disadvantaged?

Mr. Enoch: Just a moment, I would like to know if the port-to-port transportation is the only thing that is involved in this case?

Mr. Belnap: I don't know whether it is or not, but I want to ask that first, Mr. Examiner.

Mr. Enoch: Then I think you ought to make yourself clear on that.

Mr. Belnap: I tried to.

Mr. Enoch: You haven't to me, and you can by saying either yes or no.

Mr. Belnap: Yes.

Mr. Enoch: That there is only just port-to-port transportation in this case?

Mr. Belnap: I don't know whether there is just port-to-port transportation. I don't think that is in this case at all. It is rail transportation in this case.

Mr. Enoch: I think before you talk to the witness, you [fol. 547] should make yourself clear so that he will know what you are talking about.

Mr. Belnap: I think he does. If he doesn't, I will restate it.

By Exam. Taylor:

Q. Do you understand the question, Mr. Behrle?

The Witness: I will have the reporter read it.

Mr. Belnap: Perhaps I should restate it for Mr. Enoch's benefit.

Mr. Enoch: Perhaps you should answer that question for him. That would suit me better than anything else.

Exam. Taylor: Let the reporter read the question.

(Question read.)

Mr. Cole: May I enter an objection to that query, because there is included therein the thought that the water transportation is in some sense, from what Mr. Behrle says, discriminated against; and what is the other phrase there?

The Reporter: "Handicapped and disadvantaged."

Mr. Cole: Handicapped and disadvantaged. There hasn't been a single word in this case to the effect that water transportation has been handicapped, disadvantaged or discriminated against.

Mr. Belnap: Well, Mr. Examiner, I don't believe the witness needs help of counsel in asking the question. I was

asking him if it was his opinion that it should be, because [fol. 548] it is not regulated. That question is susceptible of an answer.

Mr. Enoch: I have an objection to that question and all questions of a similar nature and it is this: I think it ought to be the effort of all the parties of this case to try it before the Commission and not try to build up a record here, which is going to furnish somebody some opportunities to make a great deal of publicity out of this thing and develop an attack by the railroads here on this grain waterways system of the United States and all things of that kind. I think it ought to be tried on this record here the way most of the cases are tried before the Commission.

Mr. Belnap: I don't understand the legal basis of that objection, Mr. Examiner.

Mr. Cole: My objection?

Mr. Belnap: No, Mr. Enoch's. I don't understand it.

Mr. Cole: Pardon me, I have one objection that preceded Mr. Enoch's.

Mr. Belnap: I understand Mr. Cole's objection to the effect that I have asked a hypothetical question for which no foundation was laid.

Mr. Cole: Absolutely correct.

By Exam. Taylor:

Q. Do you understand the question, Mr. Behrle?

A. His question presupposes a lot of things.

Mr. Belnap: I don't presuppose anything. I asked a [fol. 549] question, if a certain thing is his position. If it isn't, he can say no.

Exam. Taylor: As he understands it, Mr. Belnap?

Mr. Bednap: I don't mean to——

Exam. Taylor: Can you reword it so as to avoid that? The witness so understood it.

By Mr. Belnap:

Q. Is it the position of your line, Mr. Behrle, that because those engaging in transportation on a port-to-port basis of grain on the Illinois waterways have not been subject to regulation by Congress, is that it then is in the public interest to provide a type of a rail adjustment which will handicap that transportation?

A. No, that is not our position at all.

Q. Do you think the matter of regulation or non-regulation of the water carriers has anything to do with it?

Mr. Enoch: I would like to know if Mr. Behrle's answer to that question, either yes or no, will have anything to do with the determination of this case.

Exam. Taylor: That will be a point for argument.

By Exam. Taylor:

Q. Have you got the question?

A. No, I haven't.

Exam. Taylor: Read the question, Miss Reporter.

(Question read.)

The Witness: I think it—what do you mean by that?

By Mr. Belnap:

Q. Whether you encourage or discourage transportation [fol. 550] on the streams.

A. No, I think that they should both be treated alike and fairly.

Q. Do you think that the water transportation, the traffic which is transported by water and those engaged in it are entitled to the same treatment, whether they are regulated or not regulated by the Interstate Commerce Commission?

Mr. Enoch: That question isn't just right, because if they are not regulated by the Interstate Commerce Commission, they are not treated alike.

Exam. Taylor: Well, that is argumentative, too. There might be another government body that would regulate one that would not regulate the other. If the witness knows, he can answer.

The Witness: I wouldn't know even how to approach an answer to that question.

By Mr. Belnap:

Q. But Mr. Behrle, you used the word "uncontrolled and unregulated" regarding this transportation of grain on the Illinois waterways as being an important factor which led you to a certain conclusion. Now, what has the matter of regulation or non-regulation got to do with it?

That is all I am trying to develop. You thought it was important; now why?

A. Because I think that regulation and proper consideration of the subject of water competition or water transportation would place it more in harmony with the rail transportation.

Q. Perhaps so.

[fol. 551] A. And in addition to that, I think that some steps ought to be taken whereby the users of water transportation would more nearly pay their share of the cost of such transportation.

Q. Perhaps that might be so, but does that have a bearing, in your judgment, on the propriety of the rates under suspension as to whether these inland stream carriers are regulated or not regulated?

A. In the meantime, we are faced with the proposition of keeping the railroads and the elevators in existence.

Q. Yes, but that isn't the question I just asked you, Mr. Behrle.

A. I thought that was the answer.

Mr. Belnap: Will you read the last question, please?

(Question read.)

The Witness: Yes, it does.

By Mr. Belnap:

Q. Well, what is the bearing? That is what I am trying to find out; why the Commission should go one way in respect to these rates, if the inbound carrier via barge to Chicago is regulated, and why it should perhaps reach a different conclusion if that carrier is not subject to regulation under the Act?

Mr. Cole: Mr. Examiner, I submit the witness has answered that twice, now, to the best of his ability.

Mr. Belnap: Maybe Mr. Cole can tell me, because I didn't understand it.

[fol. 552] Mr. Cole: What did you ask?

Mr. Belnap: I asked the one he has answered twice.

Mr. Cole: I mean me? What did you ask me?

Mr. Belnap: You can tell what his answer is.

Mr. Cole: He has answered that——

Mr. Belnap: What is it? I don't hear it.

Mr. Cole: Well, you don't hear me?

Mr. Belnap: No, I didn't hear any answer. You had heard it and I thought you would relay it.

Mr. Cole: He answered it twice on the record.

Mr. Belnap: What was it? What was the answer.

Mr. Cole: It was quite a long one the first time he gave the answer. You don't want me to repeat it from memory? It is in the record, the first answer he gave.

Mr. Belnap: I have a very simple point I want to develop. I am really not concerned with which way the witness answers, but I do want to have clearly the position of the carriers, and if counsel doesn't want to have it stated clearly on the record, counsel on their side, I do. I think it is important that the Commission be advised as to the underlying proposition here.

Mr. Cole: He is just pushing for a different answer, that is all. It has been answered twice. If we would permit it, I suspicion seriously that the questioning will be kept up until the answer is satisfactory to Mr. Belnap; not that there has been no answer, because there have been two an-
[fol. 553] swers to the same question.

Mr. Belnap: Mr. Cole can't summarize it for me, I bet you.

Mr. Cole: It is on the record, so why should I attempt to remember what is in the record? I can give you the answer he wants but it won't be the language that is in the record.

Exam. Taylor: Proceed, Mr. Belnap.

Mr. Belnap: Maybe I should address that question to counsel, Mr. Cole, if I may, Mr. Examiner.

Exam. Taylor: All right, if he wishes to answer it.

Mr. Belnap: As to whether or not the respondents in this proceeding rely on the fact that the inbound carriers via barge to Chicago are unregulated, in any part, in support of the change in the rate application which they now propose?

Mr. Cole: Not entirely so, Mr. Belnap.

Mr. Belnap: You rely on that in part?

Mr. Cole: Yes, that is a part of it, of course; like determining the level of a rate. There are numerous considerations, all of which dovetail into one another. In one instance, one consideration may have a primary effect upon the rate level; as you well know. In another instance, that same influence or factor may have no weight. We believe, like Mr. Behrle has patiently explained, that an important

consideration in connection with this feature—an important, now, please don't misconstrue that to state that that is the main consideration, because it isn't—but an important consideration here is the fact that there is a competitor [fol. 554] that we are trying to stay in business with and we are trying to stay in business against, and naturally, as in every competitive field that I have ever known, it is natural for those two competitors to try each one to seek and maintain its own place in that business picture. Does that answer you?

Mr. Belnap: That wasn't very responsive. The first part was, Mr. Examiner, he said it was important and he went on to make a statement about something else.

Mr. Cole: I had to explain because I didn't want you to misunderstand me or misconstrue me.

Mr. Enoch: I don't want the position of these interveners misunderstood. It is our position that whether or not these boat lines or boats or barges or whatever they are that are running up and down this river are regulated or not is a most important question for this Commission's consideration, in connection with its determination of whether or not it is lawful to apply on the outbound movement from Chicago a proportional rate when it comes in by such transportation media.

Mr. Belnap: Do you adopt that statement, Mr. Cole, on behalf of the respondents?

Mr. Cole: Yes, that is another feature of this case.

Mr. Belnap: In other words, respondents take the position that the lawfulness of applying an outbound proportional isdependent on whether or not the inbound carrier [fol. 555] is subject to regulation by the Commission. Do you say that on behalf of the eastern lines?

Mr. Cole: Is solely dependent on that?

Mr. Belnap: Is in any part dependent. The lawfulness of tariff application is all Mr. Enoch addressed himself to.

Mr. Cole: Mr. Belnap, you well know that there are several different kinds of rates out from that junction point you are talking about. Theoretically, we will always have a rate that is applicable from that junction point locally as a local rate. Certainly, anybody that brings stuff into that local point, to that junction point, may use that local rate outbound. It may be brought in by airplane, truck, water carriage or in your pocket. If the use is made of a proportional rate, however, with set rules attached to the

privilege of using that proportional rate, then it does become important to consider the method by which the goods are transported into that proportional rate point, when you come to consider the transportation and application of the tariff outbound, naturally.

Mr. Belnap: Well, to be clear on that, do the eastern lines for whom you speak take the position that it is illegal and unlawful to apply any proportional lower than the local to an outbound shipment if the inbound haul to the reshipping point was by a carrier not subject to interstate commerce regulation?

Mr. Cole: Oh, as an abstract proposition of law?

[fol. 556] Mr. Belnap: I understand that is Mr. Enoch's position.

Mr. Cole: No, he said that in this case. We are not bringing out here an abstract proposition of law. That is what your question would call for; just as an abstract proposition of law. Now, you know there is a big difference between the theories of abstract law and the practical application of it here. We have got a bunch of rules and regulations involved in this case. I don't think it is proper that we engage in a discussion of abstract legal principles.

Exam. Taylor: We will leave that for briefs.

Mr. Cole: Thank you, Mr. Examiner.

Mr. Belnap: We will do that, Mr. Examiner.

Exam. Taylor: I went along with you to get the statement of position.

Mr. Enoch: Would it be an imposition for just one further remark in this connection, inasmuch as we have been so frank with one another in stating position? Perhaps Mr. Belnap will say whether or not it is his position that it is proper and lawful to apply an outbound proportional from a point like Chicago, where the inbound movement is by a private carrier, truck, water, airplane or any other method of getting it into the proportional rate point.

Mr. Belnap: If Mr. Enoch will say what he means by "private carrier", I will answer. If he wants to accept——

Mr. Enoch: I will take your definition.

[fol. 557] Mr. Belnap: If he wants to say pertaining to this case, I will say this, I think it is perfectly lawful for the carriers to provide for tariff rules under which they will provide proportionals lower than the local on grain which arrives at Chicago by the barge lines which bring it

into Chicago, and via the lake lines which bring it into Chicago.

Mr. Enoch: I asked you by private carriers. I don't care by what means it comes in.

Mr. Belnap: I said by the barges that bring it into Chicago.

Mr. Enoch: I was asking you to tell me what your position was when it comes in by private carrier.

Exam. Taylor: Proceed.

By Mr. Belnap:

Q. So far as this matter of regulation, Mr. Behrle, I understand you to further take the position that if the water carrier performing the service into Chicago has on file with the Interstate Commerce Commission its rates, then it is perfectly proper for the eastern lines to apply the proportionals on that tonnage when it moves outbound?

By Mr. Enoch:

Q. Just a moment, did you say anything about that on your direct?

A. No.

Mr. Enoch: I object to it.

Exam. Taylor: Objection sustained.

By Mr. Belnap:

Q. You mentioned, Mr. Behrle, the fact that some ele-
[fol. 558] vator operator acted as an agent for some other operator. I appreciate that agency is a legal conclusion and I want to ascertain from you the facts as to that relation so that we can determine what the relation of the parties was.

A. I am not a lawyer and I didn't speak of that relationship from the standpoint of law. But I think I can explain to you from a practical standpoint what transpired; where the elevator operator on the Alton Railroad purchased grain for movement by truck to Morris. In other words, the operation was from the farm in the vicinity of Dwight to the elevator at Morris for movement by barge. The grain did not pass through the elevator at Dwight.

Q. But the Dwight elevator operator purchases this grain from the farmers?

A. Yes.

Q. And then he resells it to somebody for shipment up the river?

A. He purchases by arrangement with the elevator operator at Morris.

Q. He is given the power to go out, and in the case of the elevator at Morris, purchase the grain, is that the arrangement, or does the Dwight man purchase it in his own name?

A. I don't know just what the operation is there, but from a practical standpoint, the elevator man at Dwight makes the proposal to the farmer and arranges with the Morris elevator for the transfer of the grain from the farm to the [fol. 559] elevator at Morris, from which point it moves out by barge. That takes the grain entirely out of the elevator at Dwight or Gardner, or wherever it happens to be.

Q. Who buys the grain? You speak of somebody acting as agent. Who buys it?

A. I don't know in the final transaction whether the payment is made by the elevator at Morris or whether it is by the elevator at Dwight.

Q. Who buys it from the farmer?

A. I don't know, but through that operation, the movement through the elevator on the Alton Railroad is entirely circumvented, and the movement is direct from the farm to the elevator at the Illinois River.

Q. When you use the word "circumvented," you imply that you can't market grain in an orderly fashion and in the public interest unless it goes through an elevator in the vicinity of the farm?

A. If prior to the advent of the barge the grain business was handled in an orderly fashion, then the answer to your question is that that traffic has been disrupted.

Q. And you understand it is now disorderly because it doesn't go through an elevator in the immediate vicinity of the farm?

A. I think the condition is chaotic.

Q. Instead of disorderly?

A. Yes.

[fol. 560] Q. It is chaotic?

A. Yes.

Mr. Belnap: Thank you. That is all.

Exam. Taylor: Any further cross-examination?

Mr. Belnap: No, that is all I have.

By Mr. Macaulay:

Mr. Behrle, you stated that this reduced rate was put into effect in 1933?

A. Yes.

Q. Because of barge competition at Morris on grain going to Chicago?

A. Yes.

Q. Do you know of your own knowledge whether grain was shipped from Morris to Chicago by barge in 1933?

A. I didn't see any move at that time, Mr. Macaulay.

Q. Isn't it a fact, Mr. Behrle, that in 1933 and shortly prior thereto, great inroads had been made in the Alton and the Rock Island and a number of other railroads by the trucks that were trucking grain direct to Chicago?

A. No, not as far as the Alton is concerned.

Q. The only competition you had or anticipated was the competition from the barge line at that time?

A. Yes, sir.

Q. You stated, I believe, that you have been in traffic work for 36 years?

A. Yes.

[fol. 561] Q. Do you recall any shipments that were made from Morris at about the time you started in this business via the I & M Canal?

A. I do not.

Q. Did you ever hear of whether or not there were shipments of grain from Morris, Illinois, on the I & M Canal at or prior to the time that you started your experience?

A. I did not.

Q. When do your tariffs or when does your tariff expire or terminate that carries the intrastate rates?

A. June 30, 1940.

Q. When were those rates made effective, Mr. Behrle?

A. Which rates are you speaking of?

Q. The intrastate that expires June 30th? Do you know when those were made effective?

A. From what points?

Q. Any of the points; under the tariff that expires June 30, 1940.

A. Well, the dates varied as to the point of origin.

Q. Well, we will say at Gardner.

A. The rate from Gardner became effective April 21, 1939.

Q. And was there any other rate, intrastate rate prior to April 21, 1939, in the area defined in Exhibit 3, with which I presume you have been furnished a copy?

A. Your question is, was there a state rate from Gardner to Chicago in effect prior to the time that the 5½ cent rate [fol. 562] was published.

Q. No, prior to the present one, the one that expires June 30, 1939.

Exam. Taylor: 1940.

The Witness: That is the 5½ cent rate.

By Mr. Macaulay:

Q. Or 1940; pardon me.

A. Your question is whether or not there was a state rate from Gardner to Chicago prior — that time?

Q. Yes.

A. Yes, there was.

Q. And when was that rate made effective?

A. March 16th or March 28th, 1939.

Q. You stated that every elevator from Joliet to—I am not sure what the other point was—complained about the competition at Morris by the barge operators or barge grain buyers. When was it that you made your survey of these elevator operators?

A. We have been making surveys since the year 1933.

Q. Would you say that you have made a survey in the past year?

A. Yes.

Q. And did you say that during the past year, every elevator operator in that area on the Alton complained about the barge competition?

A. Yes.

Q. Now, you made mention of a point about uncontrolled, [fol. 563] unregulated traffic. Getting back to your——

Exam. Taylor: Are you going to go all through that again, Mr. Macaulay?

Mr. Macaulay: I want to make one statement.

Exam. Taylor: Make it brief, please.

By Mr. Macaulay:

Q. You are familiar with the tariffs that are being proposed?

A. Yes.

Q. In your opinion, is it any more fair to grant reshipping rates on unregulated lake carriers than to grant it on unregulated barge carriers in Chicago?

Mr. Enoch: I object to that. Suppose he answers it either one way or another, it isn't going to help the Commission to determine the issues in this case.

Exam. Taylor: Did you hear the objection?

Mr. Macaulay: I beg your pardon?

Exam. Taylor: Did you hear the objection?

Mr. Macaulay: I just heard a little of it.

Mr. Enoch: I said I object to Mr. Macaulay's question, because I don't believe that Mr. Behrle's answer to that question either way is going to be helpful to the Commission in determining the issue in this case.

Mr. Macaulay: Maybe it might be the basis of argument, as was said. He has made a statement of his opposition to uncontrolled, unregulated traffic, and as a position with [fol. 564] reference to barge traffic, I want to know whether or not he has the same position with reference to lake traffic. I think it is very pertinent to the issue in this case.

Mr. Enoch: I object to it, because if the Commission depends upon what a witness says about whether a thing is fair or not, it will all depend upon who can get the most witnesses. The Commission isn't going to base any decision on that.

Exam. Taylor: The witness may answer if he knows.

The Witness: He does not know.

Mr. Macaulay: I don't believe that is a responsive answer.

Exam. Taylor: He says he doesn't know; he can't answer your question.

Mr. Macaulay: All right, that is all.

Exam. Taylor: Any more?

Mr. Root: Yes.

By Mr. Root:

Q. Mr. Behrle, I understood you to say that the grain business along the Alton Railroad was in more or less of a chaotic condition and you at least implied that that was caused by the waterways, am I correct in that understanding?

A. Yes.

Q. As a matter of fact, Mr. Behrle, were all of the elevators along your line, particularly in the vicinity of Dwight, losing business to truckers who were trucking the grain direct from that community, probably from the farms to Chicago before the northern end of the Illinois waterway was complete and usable?

[fol. 565] A. We never experienced the effect of that competition and I do know that since this question arose in 1933, one trucker located in Dwight proposed to move an extensive volume of grain to Chicago by truck. I think he folded up in about one week. I do know there are some people in Dwight that do a little trucking to Chicago, but as related to the total weight, it is inconsequential.

Q. Did you ever have any complaints from elevator operators as to trucks hurting their business, at which time they requested you to give them more favorable rates so that they could compete with the trucks? I am speaking purely before the waterway was in use.

Mr. Enoch: Well, you mean from Dwight, for instance, to Chicago?

Mr. Root: That is right.

The Witness: I don't recall ever having any elevator in the vicinity of Dwight raise that point.

By Mr. Root:

Q. Did Mr. Robbins and Mr. McClellan ever call on you and tell you, back before the waterway, now, the trucks were cutting into their business and asked the Alton to give a reduced rate to protect their business?

A. Let's get straight on that point. What do you mean, about trucks?

Q. Here, I am talking about the time before the waterway——

A. Before the War?

[fol. 566] Exam. Taylor: A little louder, please.

By Mr. Root:

Q. I say I am talking about the time before the Illinois waterway was completed and usable for the shipment of grain by barge. Now, weren't there truck movements of grain from Dwight to Chicago before that time?

A. Not to amount to anything.

Q. Did you ever have complaints from these two elevator

men in Dwight whom I referred to, asking you to give a lower rate——

Exam. Taylor: What were the names of those two men? Can you read the question?

(Question read.)

By Mr. Root:

Q. So that they might compete with truck traffic which was hauling grain direct from farms in the vicinity of Dwight to Chicago?

A. By truck all the way?

Q. Yes, this is before the waterway was usable.

A. I recall no such conversation. I do distinctly recall the conversations that we have had since the year 1933 when both Mr. Robbins and Mr. McClellan protested vigorously against the losses of grain to the trucks and barge via Morris, and the waterway to Chicago.

Q. But they never complained about the trucking of grain direct from Dwight to Chicago?

A. It was mentioned incidentally in connection with this development which, as I have stated to you, was about of [fol. 567] one week's duration and collapsed and nothing further was heard from it. I do know that there are certain people in Dwight who engage in the trucking business who now and then do truck a load or so to Chicago, but it has never been a large factor; in fact, inconsequential, as far as we are concerned.

Q. If you didn't have the waterways, do you know if it would be an important factor? You say it is a small factor?

Exam. Taylor: Well, he has answered. That would be a mere guess. Anything further?

Mr. Root: That is all.

Exam. Taylor: Is there anything further from this witness?

Mr. Enoch: I offer in evidence, if your Honor please, Exhibits 15, 16 and 17, previously identified.

Exam. Taylor: They may be received.

(Exhibits 15, 16 and 17, Witness Behrle, received in evidence.)

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

HENRY CHRISTIANSON, was sworn and testified as follows:

Direct examination.

The Witness: My name is Henry Christianson. I am one of the assistant general freight agents of the Chicago, Burlington & Quincy Railroad, headquarters Chicago.
[fol. 568] Continuously, since 1925, my time has been devoted to preparing evidence for use in hearings before the Interstate and state commissions in litigation in which the CB&Q is concerned, appearing before examiners and state joint boards at hearings on applications of truckers for certificate or permits to operate in territory reached by the Burlington, and appearing before some of the state tax commissions in the territory in which the Burlington operates.

The CB&Q Railroad supports the tariff published by the respondents in this proceeding for the reason, the purpose of the tariff changes is, as we understand it, to correct a situation which has resulted inadvertently on the part of the respondents, I am satisfied, in a situation which unduly handicaps the lines west of Chicago in competing for business with operations on the Illinois River, for the reason that, as shown by exhibits introduced by Mr. Tannehill, under the arrangement as now published, grain moves from these river landings to points east of Chicago on rates lower than the local rates maintained by the eastern roads from Chicago to destination. In the case of the rail lines, charges are never assessed on less than the local rate applying from Chicago to the eastern destinations. In the case of the eastern half of Official territory, the spread between the local rate out of Chicago and the proportional rate out of Chicago is as much as 8½ cents. We don't know, [fol. 569] at any rate I don't know just what the charge assessed by the barge line into Chicago is or the charge made by the tugs which haul in barges. The indications are all, however, that the cost is or that the charge is less than 4½ cents a hundred pounds.

The effort of the respondents to place their dealings with the barge lines or with the operators on the Illinois River on a parity with the arrangements they have with the rail lines will remove this present unfair treatment of the western lines. As I say I don't believe that unfair treatment was deliberate. It is something which has simply crept

into the situation. The respondents are doing what they now can to correct it and I believe they should be permitted to correct the situation.

By Exam. Taylor:

Q. Is that all you have?
A. Yes, sir.

Exam. Taylor: Any questions by counsel? Any questions by counsel in favor of the proposed schedules? Cross examine. (No response.) Witness excused.
Mr. Macaulay: Just one question.
Exam. Taylor: Mr. Macaulay.

Cross-examination.

By Mr. Macaulay:

Q. You state that you don't know what the charge is by barge. Do you know what the charge is by lake to Chicago from a point such as Duluth?
A. No, I don't.

Mr. Macaulay: That is all.
[fol. 570] Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Mr. Enoch: Mr. Hegberg.

R. M. Hegberg, was sworn and testified as follows:

Direct examination.

By Mr. Enoch:

Q. Give your name to the reporter, please.
A. My name is R. M. Hegberg. I have been employed in the Santa Fe traffic department for more than 20 years. The address is 80 East Jackson Boulevard, Chicago.
Q. Did you distribute an exhibit here?
A. I distributed an exhibit, yes, sir.

By Exam. Taylor:

Q. Just one, or three?

A. Just one. I gave you three copies.

Mr. Enoch: I ask that it be marked Exhibit No. 18.

(Exhibit 18, Witness Hegberg, marked for identification.)

By Mr. Enoch:

Q. Was this Exhibit No. 18 prepared by you?
A. It was, yes, sir.

By Mr. Belnap:

Q. How do you spell your name, please?
A. H-e-g-b-e-r-g.

By Mr. Enoch:

Q. Proceed to explain this exhibit.

A. The line of the A. T. & S. F. Railway is the first railroad south of the Illinois River in the territory east of Ottawa. In this particular territory we have grain ele- [fol. 571] vators at every station Coal City and west. Barge competition on the Illinois River has taken almost all of the corn tonnage normally shipped from points on our line across country from Morris, to which river port the barges have attracted most of this business.

Exhibit No. 18 shows the corn shipments made from stations Lorenzo to Kinsman inclusive for the years 1927 to 1932, inclusive, with a six-year average. From these six shipping points we formerly received an average of 557 cars of corn annually prior to the beginning of barging on the Illinois Waterway in 1933. The rail business from long established elevators at these points has been diminishing until now there is practically nothing left as this exhibit shows current total corn movements by rail from these stations for 1938 to be 116 cars and for eleven months of 1939, 56 cars.

Efforts to hold this tonnage to rail shipment by rate reductions have not brought results. The barge-served elevators at Morris offer prices which attract this corn tonnage and the additional artificial stimulus given barge transportation by the preferential treatment accorded riverborne grain by eastern railroads in the application of their proportional or reshipping rates from Chicago has virtually eliminated rail transportation from this grain-producing area along our line and crippled the legitimate func-

tions of the rail-served grain elevators located at these stations Coal City to Kinsman, inclusive. We believe ex-river grain or the products thereof should not be moved [fol. 572] eastwardly by rail from Chicago upon proportional rates containing more favorable conditions than are applied on ex-rail Illinois grain.

By Exam. Taylor:

Q. Is that all?
A. That is all I have.

Exam. Taylor: Any questions by counsel? Any questions by counsel in favor of the proposed rates? (No response.) Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Does the Santa Fe Railroad own the elevators along this line?
A. Do they own them?
Q. Yes, sir.
A. No, sir.
Q. Do they operate them?
A. I don't know of any.
Q. Privately owned elevators?
A. I understand so, yes.
Q. It is the view of your line that if the eastern carriers are able to justify what is here proposed, that the result will be to eliminate the transportation of grain on the Ililnois waterways by barge and have it transported via the rail carriers?
A. No, we only hope to recapture the tonnage that we have lost, or some of it.
Q. Have you made any investigation how much you are [fol. 573] going to get back?
A. Well, with parity, we feel that we ought to get back somewhere near the average.
Q. That you handled prior to the time that there was any river transportation?
A. Well, I would say so.
Q. That is what you are shooting at, is it not?
A. Comparatively so, yes.
Q. What do you mean by "parity"?

A. Putting the barge transportation on a parity with rail transportation.

Q. That is what you said. What do you mean by putting it on a parity?

A. Well, eliminate the preferential rates or privileges it now has on this particular commodity.

Q. Would you be somewhat more specific and tell me what rates you are talking about; what you want to eliminate, without using the adjective. Just tell me about the rates. We will argue the case later.

A. I said that with parity of conditions, we believe we could recapture considerable of this grain.

Q. What do you mean by "parity"?

A. Well, equal rights for both rail and barge.

Q. You mean the rates from Morris and these other points to Chicago should be on a parity?

[fol. 574] Exam. Taylor: With what?

Mr. Belnap: I don't know. He says equal and parity. He has got to start with a peg point and relate something to something. I can't tell what he means.

Mr. Enoch: I think that the answer previous to this last answer was a very competent answer to that point.

Mr. Belnap: The one that had "preferential" in it?

Mr. Enoch: May we have that read for Mr. Belnap again?

Exam. Taylor: Read the question and answer.

(Record read.)

By Mr. Belnap:

Q. Equal where?

Mr. Enoch: Oh, I think this is going a little too far.

Mr. Belnap: Please, Mr. Examiner——

Mr. Enoch: He doesn't say where——

Exam. Taylor: No cross talk, now. We are just going to get one at a time. The reporter can't get both of you when you both talk at once.

Mr. Belnap: I am cross-examining.

Mr. Enoch: I am objecting to that kind of cross-examination.

Mr. Belnap: I will abide by the Examiner's ruling, but I don't thing it is fair for eminent counsel for the rail lines to continually interrupt me.

Exam. Taylor: You put your question and if anyone desire- to object, object and I will make my ruling.

[fol. 575] Mr. Belnap: I want to know what the witness means by the word "parity." He says "equal."

The Witness: Equality.

Mr. Belnap: Is he talking about rates to Chicago or is he talking about——

The Witness: Talking about the entire situation.

By Mr. Belnap:

Q. From origin to destination?

A. Yes, sir.

Q. And you state the rate via the river, the proportion up to Chicago, the rate should be the same on the barge as via the rails?

A. I didn't say that, but today you have——

Mr. Cole: Mr. Examiner, I think if you will permit me, we can have this cleared up if we go back and examine this witness' statement on direct, and I feel sure that Mr. Belnap evidently has misunderstood the witness' statement on direct. The witness did make clear what he there referred to as his hopes of having the ex-barge grain and the ex-rail grain treated on a parity.

Mr. Belnap: I do not understand the proposal is to treat ex-rail and ex-barge on a parity.

Mr. Cole: This witness asked that on his direct examination.

Mr. Belnap: That, Mr. Examiner, is not the proposal of the eastern lines. The eastern lines proposed to have a wide-open application of their proportional in so far as [fol. 576] they control it to ex-rail grain and to exclude from that application ex-barge rates. That is the proposal of the respondents. There is no limitation in their rule as to an application of the proposal. My question is what the man means by the word "parity."

By Exam. Taylor:

Q. Can you explain any more definitely than you have already explained?

A. Well, in my testimony I stated that there is preferential treatment now being accorded barge transportation.

Q. In what way?

A. They are permitted to apply the reshipping rates from Chicago; whereas all-rail, we are subject to the local rate from Chicago.

By Mr. Belnap:

Q. I am asking you about what the eastern lines and their rules—you are familiar with their rules?

A. I am familiar with the rules, yes.

Q. In so far as the rules which govern the application of the proportionals published by the eastern lines are concerned. Presently, they provide for applying proportional rates on either ex-barge or ex-rail or ex-lake grain, do they not?

Mr. Enoch: Those rules are in evidence.

Mr. Belnap: Pardon me, sir. I have got a question that is unanswered.

Exam. Taylor: He wants to know from this witness if he knows that.

By Exam. Taylor:

Q. Do you know that, Mr. Witness?

A. The question was whether or not the reshipping rates [fol. 577] apply to ex-lake, ex-barge and——

By Mr. Belnap:

Q. Ex-rail grain.

A. They do, yes.

Q. Under the same circumstances and conditions, as far as rules are concerned. Today, they are treated equally, are they not, the three, ex-barge, ex-rail and ex-lake grain in so far as the rate application of the eastern lines is concerned?

A. With the proviso that you would have to on ex-rail transportation protect the local Chicago to destination rate.

Q. As far as the combination of the rail through charges is concerned?

A. Yes, sir.

Q. The proposal is not like that in so far as that of the ex-barge grain is concerned, is it?

A. No, it isn't.

Q. It is to exclude entirely the ex-barge grain from the application of the proportional?

A. That is right.

Q. So the proposal of the carriers is to treat ex-barge grain differently than they treat ex-rail grain, isn't that true?

A. It would be, yes.

Q. So there would be no parity as far as rate application east of Chicago under the respondent's proposal. You appreciate that, don't you?

A. It wouldn't be exactly the word "parity."

[fol. 578] Q. There would be no parity?

A. No.

Q. Does your railroad participate in the routes via which the proposed rates east of Chicago apply?

A. I don't think I understand the question. Will you repeat it?

Exam. Taylor: Read the question.

(Question read.)

Mr. Enoch: I would like to know if the intention is to inquire whether the Santa Fe is a party to those rates east of Chicago.

Mr. Belnap: The purpose of the present question is whether he participates in the route by which the proposed rates east of Chicago apply.

Mr. Enoch: I object, if that is what you are trying to do, until you tell this witness what you mean by "route."

Mr. Belnap: The routes publishing the tariff by which the rates apply.

Mr. Enoch: What rates?

Mr. Belnap: The rates which are in effect and under suspension east of Chicago.

Mr. Enoch: Chicago to New York, for instance.

Mr. Belnap: I won't restrict myself to one destination. Wherever the rates under suspension would apply.

Exam. Taylor: You mean the proportional rate east of Chicago?

[fol. 579] Mr. Belnap: Exactly, sir, and reshipping.

Exam. Taylor: You don't mean the through rate from the origin through the transit point or Chicago to destination?

Mr. Belnap: I don't understand any such rates are involved in this case, Mr. Examiner.

Exam. Taylor: Does the witness understand the question?

The Witness: Well, of course we don't participate in the proportional rates east of Chicago.

Exam. Taylor: That answers the question.

By Mr. Belnap:

Q. Your exhibit shows the shipments, your Exhibit 18. It doesn't show the destination.

A. That is right.

Q. Where is the destination?

A. Well, it is hard to say. It all came into Chicago, or practically—yes, it all came into Chicago. Some went east and some stayed here.

Q. The initial haul, however, was to Chicago?

A. That is right.

Q. Under the separately published rate of the Santa Fe Railroad applying to Chicago as the destination?

A. That is right.

Q. You said that your line is the nearest railroad to the south bank of the Illinois River?

A. That is right.

Q. For instance, Streator. How far is it cross country [fol. 580] from your station to the Illinois River?

A. From Streator?

Q. Yes, approximately.

A. I don't know.

Q. How close are you to the Illinois River in the territory which you covered by your testimony?

A. Between 10 and 15 miles.

Q. And then the next railroad to the east or south of you running into Chicago is the Alton?

A. That is right.

Q. And how far across country is it from your line to that of the Alton, cross country in that territory?

A. A very short distance; probably five or ten miles.

Mr. Belnap: Go ahead.

Exam. Taylor: Any questions, Mr. Macaulay?

By Mr. Macaulay:

Q. Referring to Exhibit 4, which sets forth your intrastate rates, can you state when those rates were made effective?

Mr. Enoch: This witness is not familiar with that exhibit.

Mr. Macaulay: I am referring to tariff 7124-I, ICC No. 13039.

The Witness: When that first became effective, is that the question?

By Mr. Macaulay:

Q. When was that particular tariff made effective?

[fol. 581] A. I don't know. I would say shortly after the time that the rates from Morris were published by the Rock Island.

Q. Around in April, then, of this year, would you say?

A. Oh, yes. The rates in effect today were effective on April 19, 1939, I believe.

Q. But your rates were made effective approximately the same date that the Rock Island intrastate rates were made effective?

A. That is right.

Q. All right. In the event that reshipping rates were denied barge traffic, do you know whether or not your railroad has formed a policy as to whether the intrastate rates will be eliminated after their termination date, June 30, 1940?

A. That all depends upon developments. We don't know what the situation will be until that time arrives.

Q. About when was the Santa Fe put through that territory around Morris?

Exam. Taylor: What do you mean?

By Mr. Macaulay:

Q. When was the line established?

Exam. Taylor: What do you mean, built in there?

Mr. Macaulay: Yes.

Mr. Enoch: B. C. or A. D.?

The Witness: I don't know; I think it was B. C.

Mr. Macaulay: That is all.

Exam. Taylor: Any further questions of this witness? (No response.) Witness excused and we will take a recess.

Mr. Schier: I would like to ask a question if I may, [fol. 582] Mr. Examiner.

Exam. Taylor: Mr. Schier.

By Mr. Schier:

Q. Mr. Hegberg, geographically does your railroad compete with the Illinois River? That is compete with the barge traffic on the River?

A. Yes.

Q. Barge operators provide competition for you, don't they?

A. They do.

Q. Are your present grain rates authorized by the Illinois State Commission or the Interstate Commission as the case may be?

A. Yes, sir.

Q. When the Illinois Commission authorized them, were they found to be compensatory?

A. Yes, sir.

Q. Do you know if any regulatory body has ever found the barge rates on the Illinois River to be compensatory?

A. No, sir.

Mr. Oliphant: Mr. Examiner, might we have a differentiation between barge lines to which Mr. Schier refers?

Mr. Schier: I will exclude the Federal Barge Lines, Mr. Oliphant.

By Mr. Schier:

Q. Do you know approximately how many members of the Chicago Board of Trade are using this Illinois River northbound to Chicago?

[fol. 583] A. No, sir, I do not.

Q. Would you say it was three? Would you say it was thirty? Would you say it was five? Have you any idea?

A. No, I have no idea.

Q. Would you say it was more or less restricted to the Norris Grain Company, the Continental Grain Company, probably Rosenbaum Grain and maybe one other?

Mr. Belnap: Mr. Examiner, I submit that the witness three times said he doesn't know.

Mr. Schier: I think his memory will be refreshed, Mr. Belnap, by coaching along a little bit.

The Witness: I don't know.

By Mr. Schier:

Q. Would you have any idea of how many members of the Chicago Board of Trade do not use it?

A. No, sir.

Q. Do you have any idea how many members there are of the Chicago Board of Trade?

A. I have not.

Mr. Schier: Mr. Brown, have you any idea?

Exam. Taylor: Well, Mr. Brown isn't on the stand, Mr. Schier.

By Mr. Schier:

Q. Well, would you believe that it is approximately a thousand?

A. I would, yes.

Q. Do you think I would be close enough to that?

[fol. 584] A. Yes.

Mr. Schier: There seems to be 1,604, for the record.

Mr. Macaulay: I object to counsel putting in statements to the number when the witness is unable to make the statement. If he wants to appear as a witness, he may do so.

Exam. Taylor: I sustain the objection.

By Mr. Schier:

Q. Have you any idea, Mr. Hegberg, why the rest of these members don't use it? In other words, is there adequate space available for all to use it, or is this something that is just provided for the use and perhaps demoralizing the normal method of grain trading in this state?

Mr. Macaulay: I object to that. He hasn't qualified as a witness who has knowledge of those facts. He says he is in the traffic department of the Santa Fe.

Mr. Schier: I am simply asking his opinion. He may know.

Exam. Taylor: Objection sustained.

By Mr. Schier:

Q. Do you know, Mr. Hegberg, if the operators on the Illinois River pay any toll for the use of that waterway?

Mr. Belnap: I object, as going beyond the bounds of his direct, Mr. Examiner.

Exam. Taylor: Objection sustained.

By Mr. Schier:

Q. Do you know if your railroad, Mr. Hegberg, pays any taxes to the state, right of way?

A. Yes, it surely does.

Q. And that factor, of course, is figured in the construc-
[fol. 585] tion of your rates?

A. That is right.

Mr. Schier: That is all I want.

Exam. Taylor: Anything further from this witness?

Mr. Belnap: If he is qualified to give construction of rates and various costs that go into them, I would like to pursue that inquiry.

Exam. Taylor: We overruled those objections, Mr. Belnap.

Mr. Belnap: I will pass him.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Mr. Brown: Mr. Culbertson, please.

W. E. Culbertson, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name and address?

A. W. E. Culbertson, Delavan, Illinois.

Q. What is your business or occupation?

A. I am the secretary of the Illinois Grain Dealers Organization.

Mr. Belnap: Louder, please.

The Witness: Secretary of the Illinois Grain Dealers Organization.

By Mr. Brown:

Q. About how many members are there of your organiza-
[fol. 586] tion?

A. We have an organization of approximately—we have about 300 members, operating about 40 per cent of the 1,700 grain elevators in the State of Illinois.

Q. And each one of your members operates a grain elevator in the country somewhere in Illinois?

A. Not all of them. We have some receivers and some broker members.

Q. I see. Have you a statement to make?

A. Yes. Our interest in these reshipping rates from Chicago on ex-river grain is that if they are to continue to apply to barge grain, it means that a large percentage of members in the Chicago area must cease their operations in the country grain-buying business. We have some relief by asking the carriers for reduced rates and have been given what we hoped would be competitive rates on corn; but these rates were non-transit, and with transit allowed on barge grain, this relief was not adequate. At the present time, the country elevator in the Chicago area is doing business at a loss in order to hold their customers and to ship by rail.

What we can't understand is why grain arriving in Chicago with no previous rail haul is entitled to transit, while that arriving by truck is not. We feel that we are entitled to relief and respectfully ask the Commission that the rates from Chicago to eastern points on ex-river grain be cancelled.

[fol. 587] I think that is about all the statement that——

Mr. Brown: Take the witness.

Exam. Taylor: Any questions by counsel for respondents? Any questions on this side? (No response.) Cross examine.

Cross examination.

By Mr. Belnap:

Q. From the standpoint of your members, what has been the effect of the requirement contained in the tariffs of the initial lines that transit will not be permitted under the intrastate rates which they publish?

A. Well, the rate that we have obtained hasn't been of adequate relief without transit.

Q. What has been the effect on the movement of that requirement in the tariff? You are familiar with it, are you not?

A. I am familiar with—I don't know if I understand just what you are asking me.

Q. You understand that from a certain territory some of the Illinois lines publish intrastate rates lower than their interstate rates and by their own tariffs provide that such rates may not be used if transit is claimed on the grain?

A. Yes.

Q. Now, what has been the effect of that?

A. Well, it has recaptured some of the grain.

Q. Recaptured it from what?

A. From the truck and barge.

Q. And you say it is not a satisfactory adjustment?

[fol. 588] A. It isn't adequate. It doesn't go far enough.

Q. Why?

A. Because of the fact that the barge and truck are still able to take the grain from certain territories.

Q. And it is your impression that if what the eastern carriers propose becomes effective, that the movement by the barge lines will cease?

A. No, sir.

Q. What do you think the effect will be?

A. I think it will lessen the grain moving from territory further from the river.

Q. From certain territory it will stop the movement?

A. That is right.

Q. Can you say what that territory is?

A. That territory that is farther removed from the waterway.

Q. Farther than what?

A. Probably 15, 20 miles.

Q. For the territory that is 15, 20 miles further than what?

A. From the river.

Q. In using that distance, are you going to take and say that for 10 or 15 miles from the river, there will be no movement to the river by truck and thence moved by barge?

A. No, sir.

Q. I don't understand your answer.

A. I couldn't answer you any more clearly.

[fol. 589] Q. Where is the territory that it is going to stop the movement?

A. I don't say it will stop it. I say it will be less.

Q. From what territory?

A. I just told you from 15 to 20 miles from the river.

Q. Well, more distant than that from the river, is that the territory you are talking about?

A. Yes, sir.

Q. Is it anyhandicap on the grain which moved to Chicago on these so-called non-transit rates that transit is not permitted?

A. Why, certainly.

Q. What is the nature of that handicap?

A. I am not a traffic man and I am just from the country and I don't pretend to get into all the details of the grain handling business other than from the country elevator point.

Q. I appreciate that. I am not going to ask you any technical questions about rates or application of rates or tariff provisions. I am interested in the effect of a rate of a different character, with which you are familiar, on the movement, and that is why I ask you additional questions.

A. Our grain in the country, grain-buying business naturally depends upon transportation that they have to get to a terminal market. You appreciate that. The cost. And if our grain that we ship in by rail is penalized by not having transit and that that is brought in by waterway is given an advantage over that by rail, why naturally our [fol. 590] members are at a handicap.

Q. You consider the restriction which the originating lines have placed on the use of those interstate rates so that they will not permit transit thereunder to be a penalty?

A. If they allow transit on water grain; on river grain.

Q. It is a penalty only in that event? Otherwise, it is no penalty?

A. No, because they have through rates.

Q. Who has through rates?

A. All the rails.

Q. By the use of the interstate factor to Chicago and the proportionals beyond?

A. That is right.

Q. Now, isn't your grain which moves on the intrastate

rates still penalized as compared with the grain which pays the interstate factor to Chicago?

A. I wouldn't really know. I am not far enough advanced in traffic matters to really make a statement.

Q. Do you know what the difference between these intrastate rates which carry no transit and the interstate rate which carries transit is?

A. Not exactly from a rate standpoint, but I do know that the grain won't sell for as much when it gets into Chicago, sir.

Q. How much is the difference?

A. It is just enough to make the grain business unprofit-[fol. 591] able out in the country.

Q. Do you understand it is about the difference—the difference is about that involved in the rates themselves?

A. I wouldn't know.

Q. Well, what is it in money?

A. I wouldn't know.

Q. Do you operate an elevator?

A. Yes, sir.

Q. Where?

A. At Steward, Illinois.

Q. Where is Steward?

A. In Lee County.

By Mr. Root:

Q. Dixon is the county seat of Lee, isn't it?

A. That is right. We are on the CB&Q.

By Mr. Belnap:

Q. How far are you from the Illinois River?

A. Well, I would say about 50 miles.

Q. Is there any grain moving from your territory to the River for movement by barge into Chicago?

A. Not much.

Q. Is there any?

A. I wouldn't know.

Q. You know of none, in other words?

A. Well, I have heard of some, but I don't know that it did, see.

Q. You have said that grain which moves on the non-[fol. 592] transit intrastate rates sells for less in Chicago. Do you ship that grain yourself? Are you the shipper?

A. I own the elevator.

Q. Are you the shipper of the grain?

A. Yes, sir; the elevator is.

Q. The elevator company?

A. Yes.

Q. Is the shipper of the grain?

A. Yes.

Q. Do you elect whether to ship on the intrastate or the interstate rate to Chicago?

A. Yes.

Q. And what is the difference from your station?

A. Well, we have a 10½ cent interstate rate and I think it is 9½, 9 or 9½, I wouldn't be very positive, but it is some little reduction.

Q. And do you elect to ship on the lower rate?

A. It just depends on the—it may be shipped on the intrastate or interstate rate according to—in that territory, we send it to Chicago, generally, and it is sold on the market, to the best advantage.

Q. When do you elect upon which rate to ship?

A. Whichever we can get the best price for.

Q. That is, you get one price on one basis and one price on the other, is that right?

[fol. 593] A. Sometimes, yes, sir.

Q. And if the difference in prices is not as much as the difference in rates, you will ship on the lower rates?

A. We depend on our commission merchant in Chicago or in the market to look after our interest when we send him the grain, and we take his judgment.

Q. That is the way it works out, isn't it?

A. I expect it is, yes, sir.

Q. Then if the difference in prices is greater than that difference in rates, then you will ship on the higher rate?

A. That is right.

By Mr. Root:

Q. Will you state how many, approximately, the members of your association you believe have been injured by the practice of shipping grain over the Illinois waterway, under existing tariffs?

A. Well, there is quite a large percentage of them. I wouldn't know just exactly because I haven't contacted each and every individual.

Q. Can you state specifically one elevator that has been injured?

A. Yes, I know that there are a number of elevators.

Q. State one, specifically.

A. For example, my own town. I live at Delavan.

Q. Has that elevator been injured?

A. Yes.

Q. Will you just tell us how that has been injured?

[fol. 594] A. Because of the fact that they just simply have lost a good proportion of their grain-buying business. The buying has been cut down. In the country elevator, the country grain business is probably done on a smaller margin of profit, that is, a buying margin, and you don't have to take my word for it. The Federal Trade Commission has found that the grain handling industry has been handled on a very small per cent of a volume and a turnover of the business, and it depends upon the volume of grain that they would have to handle. If you are buying grain on a cent and a half or two cents a bushel and you have a 300,000 volume and that is cut to 200,000, why, naturally you are hurt.

Q. What is the name of this elevator down there that has been hurt? Let's find out.

A. It is a farmer's elevator down there.

Q. Delavan, Illinois?

A. That is right.

Q. Now, you state specifically that it has lost business?

A. That is right.

Q. To whom has it lost the business?

A. It has lost it to the waterway.

Q. Who bought the grain——

A. I couldn't tell you, sir, because the fact is, I did own one of the elevators that that elevator operates, operated it myself for more than 30 years, sold it to them, and I know [fol. 595] that they do not do the business. I also am a farmer. And I know that my neighbors haul grain to the waterway.

Q. Why do they haul it to the waterway?

A. Because of the fact that the waterways subsidize the truckers.

Q. I asked you why?

Mr. Enoch: I think the witness should be permitted to finish his answer. You asked for it.

The Witness: The elevator grain buyers at the river

points encourage the truckers to go out and buy the grain—and they don't need much encouragement. They want the haul, anything to make a few dimes for themselves, and naturally they chisel in on the business of that territory.

By Mr. Root:

Q. How far is that elevator from the Illinois River?

A. It is 20 miles, sir.

Q. Has that elevator ever attempted to avail itself of the facilities of river transportation?

A. I couldn't tell you; I don't own it today. You asked me if they were hurt and I tell you they are, because of the fact I used to handle more business in competition with them than they handle now, and have it all.

Q. Does that elevator still ship grain it buys over the rail?

A. Some of it, and they haul some of it, transport it to the water.

Q. Do you mean that particular elevator?

[fol. 596] A. Yes.

Q. Why does it haul it to the water?

A. You will have to ask the management.

Q. In other words, you don't know much about that business that you say has been hurt?

A. I do know it isn't handling in the same manner, and I know he tells me he is hurt; that he doesn't do so well.

Q. Is that man here?

A. I just want to say this, if these elevators are not hurt, they are putting up an awful howl.

Q. We want to get down to where they are hurt.

A. There will be plenty of operators or——

Q. Isn't it a fact that you don't know yourself just how or why they are hurt, isn't that true?

A. I tried to tell you that the elevator depends upon the volume of its business. Not a one of your clients could stay in business there if their volume was cut down as the country elevators out from the river are cut down.

Q. That is true, but you——

A. That is just why they are hurt.

Q. But you don't say how this particular elevator was hurt.

A. I just stated to you that the elevator at Delavan had been hurt by its volume being decreased.

Q. But you don't know the reason for the reduction?
A. Yes.

[fol. 597] Mr. Day: I submit the witness has answered the question three or four times.
Exam. Taylor: I think he has answered the question.

By Mr. Root:

Q. You don't know whether that elevator man is attempting to ship his grain by water, to handle it that way to obtain the benefit of cheaper water transportation?
A. Well, I just stated to you that he is sending some of it to the river.
Q. Does he elevate that grain in his own house first and then haul it from there to the river?
A. I think he does. Some of it, and some of it he hauls direct from the farm to the river.

Exam. Taylor: Is that all, Mr. Root.
Mr. Root: That is all.
Mr. Baxter: I have one question.

By Mr. Baxter:

Q. Mr. Culbertson, if this proportional rate is cancelled, will you get any more money for your grain at Steward?
A. I don't think that we would, no.
Q. In other words, it wouldn't hurt you one way or another at Steward as to your prices that you get on your grain?
A. That we get for the grain at Steward? No, it wouldn't.

Mr. Baxter: That is all.
Mr. Childe: I have a question, please.
Exam. Taylor: Yes, sir.

[fol. 598] By Mr. Childe:

Q. I don't understand why it is that the elevators you represent are losing this business. Why can't they retain their business under present conditions?
A. Well, I would say that the reason they can't is because the rails have given, by the transit on the waterway, an advantage to water shippers that they are not entitled to over rail shipments.

Q. How does that affect the business of your elevators? Why can't you compete? Is it because that you can't name as high a price as your competitor, is that your difficulty?

A. The grain business has always been bought on what a person can give for it, and of course the country grain dealer will naturally pay everything that he can pay in order to hold that business.

Q. Well, will you explain that a little further, please. How do you get this business from the farmer? Do you quote him a certain—bid him a certain price?

A. The farmer comes in and asks me what I will pay for his corn, what it is worth, and I will tell him.

Q. And you tell him where, at his farm or the elevator?

A. At the elevator. Some of them go to the farm and get it. Some elevators make a practice of trucking it in. That is included, the hauling charge from the farm to the elevator in the bid they give the farmers. Others do not, see.

Q. Do you base your price arrangement at F. O. B. the [fol. 599] farm or F. O. B. the elevator?

A. Both ways.

Q. How do you base your price? What fixes the price that you bid?

A. On the best market that we have for the grain.

Q. And do you take into consideration the freight rate from your shipping point?

A. Why, certainly.

Q. To market?

A. Certainly. The transportation charges, yes, sir.

Q. And by the "market," am I to understand it is the Chicago market that fixes the price?

A. Well, sometimes there are outside markets, now and then.

Q. Generally it is Chicago?

A. That is true in the Chicago area.

Q. Now then, you say that you are losing this business to the operator that ships by river?

A. You are now speaking to my station at Steward, aren't you?

Q. Whoever you are speaking for in this case; just as an example.

A. Some of them are, yes, sir. I personally am not, because—I mean just simply my own elevator—we are

just passing the profit that we might have along in order to hold the business, because when business once is lost from an elevator, a customer starts going some place else, it is hard to regain that business.

[fol. 600] Q. Am I to understand from that that you have to meet the competition right in your town of the man that ships by river?

A. Yes, sir.

Q. And you are holding that now by operating at a small margin of profit?

A. I said in many instances at no profit at all.

Q. Now, take the man whom you say is hurt by this thing. For instance, the man at Delavan. You mentioned Delavan, didn't you?

A. That is right.

Q. Is he hurt because he can't bid as high a price as his competitor that ships by river, is that your point?

A. And have an adequate profit.

Q. Couldn't he bid that high a price if he himself used the river for shipping?

A. He does go to the river some.

Q. Why can't he bid as high a price as the other men that ship by river?

A. In a lot of instances, because of the fact that truckers will haul—there is no regulation, there is no knowing what it will cost in a matter of the charge that will be made by a trucker to transport grain or any other products. It is the same thing as the barge. You don't know what those rates are.

Q. Well, you all use the truckers to get the grain to the river or the elevator?

[fol. 601] Mr. Brown: No, he didn't say "you all use."

Mr. Childe: I mean all your elevators.

Mr. Brown: He didn't say that, even.

By Mr. Childe:

Q. Don't you use trucks to get the grain from the farm?

A. Sometimes the farmer—I said that sometimes, that the elevator will buy the grain at the farm; sometimes at the elevator. If it is at the elevator, the farmer gets his own trucks. He may hire his own trucks.

Q. Well, your elevators, the elevators you speak for are in no different position as far as the trucker is concerned than your competitor who uses the river, isn't that true?

A. That is true.

Q. The only difference, as I understand you, is that the man who ships by river gets a lower rate into the Chicago market?

A. That is right.

Q. And because he gets that lower rate, does he bid a higher price for the grain and thereby take it away from the elevators you represent?

A. That is right.

Q. Now then, my question I tried to ask a while ago was this: Why is it that the elevator operators you represent can't use the river and get the benefit of that low river rate and thereby compete successfully with the elevator operators who do use the river?

[fol. 602] A. Why, they are not located upon the river.

Q. Well, can't they truck the grain to the river elevator?

A. They don't need an elevator.

Q. Beg your pardon?

A. They wouldn't need an elevator to go into the kind of grain business now you are advocating, because of the simple fact that I might just locate down here in the country and start soliciting farmers to haul it to some elevator. If I have ten or fifteen, twenty thousand dollars invested in grain-handling facilities at a station, it is certainly a loss to me if I have to just eliminate that elevator and cease using it, and get me a trucker or two or three truckers and start soliciting grain out on the farm to go over to the river on a brokerage basis. Now, that is what is happening, and that is just exactly what is being advocated by these river operators. They want to eliminate——

Q. The question I had in mind was this: There is nothing to prevent the elevator men you represent from using the river, by trucking grain from the farm to the river bank and thence shipping it by river?

A. No, not if you want—there is nothing to prevent you, or me, or anybody from engaging in the grain business. It is not a monopoly or restricted to any particular class of

people. Anybody can get in it. It is rather a highly competitive business; always has been.

Q. Is it a fair statement, then, of your position, that the [fol. 603] people you represent prefer to ship by rail——

A. Absolutely.

Q. And they can't do it successfully now because the rail rates are high?

A. Well, the rail rates are too high compared with the river rate, that is right.

Mr. Childe: Thank you.

By Mr. Macaulay:

Q. Mr. Culbertson, I reviewed your petition that was filed in Washington, and in that I have a note that you stated that the retention of the reshipping rates on grain barge grain would spell ruin to 90 per cent of the country elevators of Illinois. Do I understand that that is your present position?

A. Ultimately, it would be.

Q. Ultimately, and when you say "ultimate," what do you mean?

A. I mean in the future. If this matter is not stopped, it just spreads like wildfire.

Q. Would you say that it is economically feasible to ship grain to the river from all parts of Illinois?

A. Well, the river runs right in the middle of Illinois, pretty well, and goes all the way down. We have the Mississippi on the other side, and if we can use it one place in the cross haul, this is just the beginning.

Q. You stated, at the beginning of your testimony, that the people in the Chicago area were the ones that were [fol. 604] affected at this time?

A. That is right.

Q. Not in the future. And you stated that there were about 40 per cent—no, pardon me. I don't believe you stated how many of your members in this Chicago area are affected?

A. Well, they are practically all, more or less.

Q. Are you prepared to submit a list of your members in the Chicago area who are affected and make sample ones available for cross examination?

A. Oh, no, sir, I am not.

Mr. Brown: Would you accept such a statement without cross examination?

Mr. Macaulay: Oh, no, we want to cross examine.

Mr. Brown: When?

Mr. Root: For tomorrow.

Mr. Brown: In other words, you would like to prolong this just as much as you can. That seems to be the object.

Mr. Root: I didn't hear you, Mr. Brown.

Mr. Brown: You are trying to prolong this just as much as you can. Now, you want this man to bring in a list of those who are hurt so you can bring them back for cross examination.

Mr Macaulay: This man is making a statement as to a representative group of people who are injured and we deny they are. If we have an opportunity to cross examine, we think we can show conclusively for the record——

[fol. 605] Mr. Brown: We have got some back here and you can cross-examine them.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: No, sir.

By Mr. Macaulay:

Q. You state that there are times when you have no profit at all?

A. That is right.

Q. You state that there are times when you have no profit you otherwise would have had?

A. The farmer.

Q. What would you say is a normal rate of profit for a country elevator operator per bushel?

Mr. Cole: Mr. Examiner, may I object to that as being completely irrelevant.

Exam. Taylor: It is outside the scope of his direct examination.

Mr. Cole: Outside the scope of direct examination.

Exam. Taylor: And on that point I will——

Mr. Macaulay: He stated about profits, your Honor, and I would like to know what he considers to be a proper rate of profit, and that seems to be the basic factor here. If they can make sufficient profit with the barge competition, then they would continue to stay in business; have no com-

plaint. I want to know what he regards as a fair profit for a country elevator operator.

[fol. 606] Mr. Day: Now, Mr. Examiner, counsel is mistaken on what the witness testified to. He didn't say that he made a profit on all this business. I recall that he said he was losing money on some of it; there was no profit at all in such transactions as that. It isn't a degree of profit.

Mr. Macaulay: He operates an elevator and he has made a statement as to the effect on his profits of this barge competition. And I want to know how badly he is affected, and the only way I can tell that is to have him state what a normal profit is.

Exam. Taylor: It is all stated on his direct, Mr. Macaulay.

Mr. Macaulay: What he considered a normal profit?

Exam. Taylor: Yes, he doesn't make a profit on a good bit of the business.

Mr. Macaulay: Yes, but he does make it on some. Now he is complaining because he doesn't make enough. His measure of what is enough can only be determined by his statement of what he considered to be a normal profit.

Exam. Taylor: What might be profit at one time might not be profit at another, under the buying and selling conditions of grain.

Mr. Macaulay: I think it is proper for him to state the range of profit.

Mr. Day: If we are going into the question of the amount [fol. 607] of profits from each of the concerns interested here, we are going to be here from now till doomsday.

Mr. Cole: Mr. Examiner, may I enter a formal objection to the question, again stating that it is irrelevant and completely immaterial.

Exam. Taylor: I will sustain the objection.

Mr. Macaulay: Note an exception.

Exam. Taylor: Note an exception on the record.

By Mr. Macaulay:

Q. You state that you have heard of some grain being trucked from Steward to the river. What point of the river did you hear it was trucked to?

A. The statement was—I couldn't say whether it was La Salle or Ottawa or—it wasn't Morris.

Q. Do you know the quantity that was involved?

A. No. I have stated I don't know that to be a fact. You hear lots of things but I don't know that there hasn't been any trucked, either.

Q. Do you know why the rates were reduced from Steward if there is no competition from the barge?

A. I suppose that their reduction is so very little that it practically amounts to nothing at Steward. But it was a continuation——

Q. What is the reduction?

A. Not over a cent or cent and a half. Maybe if these interstate rates are here, you could tell.

[fol. 608] Q. Have you ever shipped any grain to Chicago by truck?

A. No, sir, I hope never to.

Q. Do you know of any people in Steward that have ever shipped any grain to Chicago by truck?

A. Personally, I don't know of individual cases, no.

Q. Do you know of any of these members in the Northern district that shipped by truck to Chicago?

A. I don't think many of the elevators up there have done any shipping by truck themselves. There have been some of their customers that have taken grain in. From the town of Watertown, which is probably 20 miles closer to Chicago than Steward, Mr. Wakefield tells me that lots of it has moved to Chicago and some to Morris.

By Mr. Brown:

Q. By truck?

A. That is right.

By Mr. Macaulay:

Q. Is any grain shipped by water from any point other than La Salle or Ottawa or Morris from Steward?

A. I wouldn't know. I don't know that there has any been shipped from Steward. I hope there hasn't been any. I hope there never will be.

Q. Would you say that the grain dealers who have country elevators, have a vested interest in the grain handling business, if it can be shown that the farmers themselves will be hurt in the event that the barge reshipping rates are eliminated, that as the choice between the two, the coun-

[fol. 609] try elevator men shouldn't be hurt.

Mr. Enoch: I think that——

Mr. Brown: I object to that.

Exam. Taylor: It is too involved, in the first place.

Mr. Enoch: Speculative.

Exam. Taylor: Speculative and involved. If you can cut it down so that the witness can grasp it,——

Mr. Brown: Ask him five years from now; maybe he can tell you.

By Mr. Macaulay:

Q. I am talking about the present day. You have made a great point that the investment of the country elevator is being jeopardized because of barge traffic and you have then stated that because of the small margin of profit——

A. Wait a minute, I didn't say——

Q. (Continuing:) —because of the small margin of profit, the farmers are getting a higher price for their grain than they would in the event there were not reshipping rates?

A. No, I didn't make that statement.

Q. What did you say?

A. I said that——

Mr. Brown: Just wait a moment. Ask the question: don't ask him what he did say.

Mr. Macaulay: He said he didn't say it. Let him say what he did say.

Mr. Brown: Repeat the question, please.

[fol. 610] Exam. Taylor: Read the question, Miss Reporter.

(Question read.)

Mr. Brown: Mr. Examiner, this witness has shown that when you reduce the volume of grain that a country elevator has been handling, part of his equipment is idle and consequently useless to him. Whether or not it affects the prices hasn't got anything to do with it. He is talking about the grain being taken away from his usual facilities over to another place that never was in competition to him in recent years. That is his story.

Mr. Macaulay: What is the ruling? I asked him that premise and he said he didn't make the statement.

Exam. Taylor: He said he didn't make the statement. That was the answer.

Mr. Macaulay: All right, I will break it down.

By Mr. Macaulay:

Q. In your opinion, are the farmers getting any benefit from the barge traffic on the Illinois waterways?

Mr. Brown: Just a moment. I am going to ask the witness if he personally knows anything about what the barge is paying for grain, and to what elevators do you refer?

Mr. Macaulay: If you have to confine it that way, I believe that all of his testimony should be stricken, because we have allowed him to proceed in a very general way, as a man who is the head of an organization and had knowledge of the facts. If you wish to be technical about it, I think [fol. 611] that all of his statements should be stricken and start over again.

Mr. Brown: No, if you will tell him what prices are being paid for barge grain and what prices he can get for his grain at Chicago and the amount of transportation deduction from that, then he would be able to answer. You are asking him to give you what the price is that is paid for barge grain. He doesn't know.

Mr. Macaulay: I believe that his statements, now that I recall, are sufficiently clear; I will not proceed further.

Mr. Root: May I ask one or two questions?

Exam. Taylor: Is this something that has come up on cross-examination?

Mr. Root: This is an entirely new subject on cross-examination, something I overlooked. I just wanted to ask him, this man, a very few questions; won't get into this matter at all.

By Mr. Roote:

Q. Mr. Culbertson, are you familiar with the Co-operative Allied Grain Dealers Corporation at Morris?

A. No, sir.

Q. Are you familiar with the Farmers Square Deal Corporation at Morris.

A. I know the manager.

Q. Is he a member of your organization?

A. No.

Q. The Farmers Elevator at Zion?

[fol. 612] A. Yes, sir.

Q. Mr. McClellan at Dwight?

A. Yes, sir.

Q. Charles Treasure at Gardner?

Exam. Taylor: Wait a minute, we are trying to get this on the record straight. Will you please give the names of the gentlemen so that the reporter can get them?

Mr. Root: I am sorry.

By Mr. Roote:

Q. Mr. Barkley in Yorkville?

A. That is right.

Q. There is no need for me to state any further names. But you are acquainted with the fact that a number of your members have organized what is known as the Co-operative Allied Grain Corporation in Morris?

A. That is right.

Q. Now, do you know whether those members whom we just mentioned are still in business as independent dealers?

A. I think they are.

Q. They are not brokers in grain, are they?

A. They do act in certain instances as brokers, I have been told.

Q. You just describe how they act as brokers, will you, please.

A. Well, I consider a man a broker who buys grain that doesn't handle it through facilities.

Q. In other words, he is a broker unless he runs grain through his house, is that right?

[fol. 613] A. Well, he is not exactly an elevator operator.

Q. He still buys grain from people, doesn't he?

A. That is right, but the fact that he may have a house at Morris and he goes out to Dwight and buys grain to take to Morris, that, I would consider that as a brokerage business for the Morris Elevator, for the river elevator. Now, if he were to take it through his elevator, then I would think he was a grain dealer at Morris.

It has always been an accepted idea down through nearly 50 years that we have maintained an organization, that a country elevator dealer, to be in the business, must have adequate grain handling facilities and operate them. Now, I am just giving you the rules that have been pushed down through 50 years, the rule of the grain trade.

Q. Would you consider Mr. McClellan at Dwight a man in the grain business?

A. I would when he handles grain through his elevator at that end of it at Dwight, if he does, and he also is a

broker, that I would consider. Now, he might or he might not.

Q. In other words, if he ships by rail he is an elevator operator, and if he happens to sell the grain to a river elevator and truck it down there for shipment by water, you consider him a broker, is that right?

A. No, sir, a man can be an elevator operator, he could ship by water, he could ship by truck, he could ship by rail [fol. 614] providing that he had adequate facilities to store his grain, to handle it at that particular point. In my judgment, he would be a broker if he started on the telephone or rode out over the country and bought grain to go to some other points. That would be a brokerage business.

Q. Then, so far as you know, Mr. McClellan and the other members——

A. Is both a broker and a grain dealer.

Q. Will you pardon me until I finish my question?

Mr. Day: Mr. Examiner, I object to any further questions along this line. It seems to me it is just interminably dragging the thing out. It is very clear from the answers, what he regards this—what business he regards this man at Dwight in. He is doing an elevator business where he puts the grain through his elevator. Where he buys grain and it is carried over to the barge elevator at Morris, he is in the brokerage business. I presume if he has got an automobile sales room in connection with his elevator at Dwight, he is in the automobile business. It is very clear.

Exam. Taylor: Do you so understand it, Mr. Root?

Mr. Root: What is that?

Exam. Taylor: Do you understand it that way?

Mr. Root: Why, no, the fact isn't at all what the witness thinks. He doesn't understand how this river business is handled.

[fol. 615] Exam. Taylor: That was the answer to your question.

Mr. Root: If that stands as his answer, I just want it, because it is apparent he doesn't understand how this is handled.

Exam. Taylor: You can rebut that.

Mr. Root: All I was doing was laying a foundation to show his lack of knowledge.

Exam. Taylor: Is that all the cross examination? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.
Mr. Brown: Mr. Farlow, please.

LAWRENCE FARLOW, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name and address and occupation?

A. Lawrence Farlow, Bloomington, Illinois.

Q. What is your business?

A. Secretary of the Farmers Grain Dealers Association of Illinois.

Q. Have you a statement to make?

A. I have a statement which I would like to read.

Q. Please proceed.

A. The organization which I represent is a service organization for 240 farmers elevator companies in Illinois. [fol. 616] These companies are owned and controlled by approximately 30,000 farmer stockholders and serve approximately 60,000 farmer patrons. They represent an investment of about $5,000,000 in grain handling facilities. Substantially all of these facilities were especially constructed to accommodate the shipment of grain by rail. Their principal business is that of purchasing grain from farmers in their respective communities, assembling it in carload lots and forwarding it to the most advantageous terminal market or processing plant.

One of my duties as secretary of the association is to deal with traffic and rate matters that affect any considerable number of our member companies. For more than ten years I have served as chairman of the Grain Committee of the Mid-West Shippers Advisory Board and in that capacity it has been my duty to make quarterly estimates of grain car requirements for the information of the shippers and carriers. This has required a special study of grain production and changing modes of transportation.

As early as 1932 we observed that trucks were making their appearance as a factor in the transportation of grain. By 1935 grain was arriving in Chicago by truck in such large volume that it presented to the rail carriers, and country elevators served by rail carriers, a problem of competition. In some instances the grain was purchased by the trucker from an individual farmer and resold to an elevator [fol. 617] operator in Chicago. In other instances the grain was transported from the farm to Chicago by an individual trucker and sold to a Chicago elevator for the account of the farmer producer. In both instances the local elevator and the railroad serving the local station suffered a loss of business to the extent of such trucking operations.

A further study of this problem revealed that the principal grain being trucked to Chicago was corn and the point of origin was in most instances within a radius of 100 miles of Chicago. Our Association, in cooperation with other organizations and individuals interested in the country grain business, called upon the railroads to revise their short-haul rates, giving more consideration to distance. It was our opinion, that, if local rates from points within this hundred mile radius from Chicago were made about equal to the actual cost of trucking, country elevators and railroads serving them would be placed in a fair competitive position.

During the year 1937 most of the rail carriers in the Chicago area had in effect local rates to Chicago which were quite effective in meeting truck competition. However, the volume of corn arriving in Chicago via the Illinois Waterway in 1937 exceeded that of any previous year. The railroads permitted their local rates to expire on December 31, 1937 and, as a result, the total amount of grain received in Chicago by truck during the year 1938 amounted to 3,193,000 bushels and the amount arriving by the Illinois waterway [fol. 618] was 11,467,000 bushels. In April 1939, in keeping with our urgent request, the carriers serving the Chicago area again published local rates on corn to Chicago which are sufficiently low in most instances to meet competition, if all of the forms of transportation serving that production area were treated as a local movement. However, on account of this discriminatory tariff which permits the reshipment of grain arriving in Chicago via the Illinois Waterway at a rate equal to that applying to grain arriving

in Chicago by rail on the higher Illinois proportional rate, we find that the local competitive rates on corn are ineffective from certain areas. Trucks that had been hauling corn to Chicago changed their course to an Illinois River loading point in order that the grain which they originated might have the advantage of the reshipping rate which was applied to barge grain but could not be applied to grain which was trucked directly to Chicago.

It is our opinion that the tariff which permits the reshipment of ex-river grain from Chicago to New York at a 26 cent rate was not intended to apply to that kind of traffic at the time it was approved, since there was no such traffic of any consequence when the tariff was published.

Mr. Belnap: I object to that type of testimony from a man who is not qualified to speak for the rail carriers. He is telling you what the rail carriers intended when they put certain items in the tariff. If he can qualify as having [fol. 619] participated in the preparation and publication of railroad tariffs in respect to that matter, I will withdraw my objection to that question.

Mr. Day: The witness has shown familiarity over a long period of years with grain and rates applicable on grain from this territory. I think he is in a position to know.

Exam. Taylor: Objection overruled. Proceed.

The Witness: It is discriminatory in that it allows shipping privileges on a certain class of grain in Chicago which has no past history so far as a rail movement is concerned, which privileges are denied to other classes of grain in Chicago of the same kind, such as grain arriving in Chicago by truck or on a local rail rate.

We have no desire to deprive the grain producers of the Illinois River Valley of any natural transportation advantages the River may afford them. In this hearing we do not seek to deprive them of certain artificial advantages, such as the development and maintenance of a navigable channel at the taxpayers' expense. But we do seriously and emphatically object to a railroad tariff which adds to these natural and artificial advantages a discriminatory advantage in the form of reshipping privileges on ex-barge grain, which privileges are not accorded to ex-truck grain or grain arriving in Chicago on a local rail rate.

Every member of our organization engaged in the busi- [fol. 620] ness of shipping grain by rail, and located at a

point having a combined truck and barge cost to Chicago less than the Illinois proportional rate, is directly and adversely affected by the tariff which discriminates in favor of ex-barge grain. Every member located at a greater distance from the river is indirectly and adversely affected, since any diversion of the grain movement from the railroads to other forms of transportation must necessarily increase the cost of transportation to those who continue to ship by rail.

One of the purposes of a farmers cooperative elevator is to handle through one elevator a large volume of business, thereby reducing the unit cost of handling. These companies have a certain amount of fixed overhead expenses. If the farmers in a community own an elevator with a fixed overhead of $9,000 a year and produce a total of 450,000 bushels of grain, all of that grain can be handled through the elevator at a cost of 2 cents per bushel. If one-third of these farmers should truck 150,000 bushels of that grain to the river at a half cent profit to themselves, the cost of handling the other 300,000 bushels through the elevator would be increased to 3 cents per bushel and the community, as a whole, would lose $2,250 as a result of the truck invasion. This constant drain of a substantial portion of the business from a large number of farmers elevator companies, which tends to weaken their morale and their finan- [fol. 621] cial structure, is my reason for taking an interest in this case.

For the reasons above stated, this Association respectfully requests that the tariff amendments proposed by the carriers to cancel reshipping privileges on ex-barge grain be approved and permitted to go into effect at the earliest possible date.

By Mr. Brown:

Q. Mr. Farlow, do your duties require you to keep in close contact with the members of your organization?

A. Yes, that is one of my duties.

Q. And were you instrumental with others in inducing the railroads to give these reduced so-called lake local rates on corn to Chicago in an effort to partially meet this barge competition?

A. I was.

Mr. Brown: Take the witness.

Exam. Taylor: Any questions by counsel? (No response.) Cross examine.

Cross-examination.

By Mr. Belnap:

Q. What do you hope will be the result of what the eastern lines propose, Mr. Farlow?

A. Pardon me, I didn't get the question.

Exam. Taylor: Read the question.

(Question read.)

The Witness: We hope the result would be to restore a larger per cent of the grain traffic to the railroads.

[fol. 622] Q. In order that the facilities of your members may be used?

A. That is one reason, yes.

Q. Have you, personally, or your members any other interest in the case?

A. Yes, our members are vitally interested in every phase of the case because all the elevators that I represent are owned and controlled by farmers, therefore the producers' interest is the first interest.

Q. As far as the effect of the case, you hope it will put the grain back through these elevators of the railroads?

A. Yes, sir.

Q. Is there any other result that they hope to achieve specifically? I don't understand these other phases or generalities. I would like to be specific.

A. That is the purpose, yes.

Q. The only purpose, isn't it, from your standpoint?

A. Well, other purposes would be served by putting grain back on the railroads; such as putting the railroads in a position to give better service.

Q. That fact, getting the grain into railroad cars is the only thing you hope to accomplish, isn't it?

A. That is the direct purpose. Other things will result through that.

Q. Do you hope to truck the grain direct to Chicago?

A. We do not.

[fol. 623] Q. I thought you complained because trucking was discriminated against.

A. I said it was discrimination to allow a reshipping privilege on grain not accorded to truck grain.

Q. Do you complain of that?

A. I pointed it out as discrimination.

Q. I am asking you, do you complain of it?

A. Yes, because I am against any rank discrimination in forms of transportation.

Q. Do you insist truck grain should be treated the same as barge grain?

A. It should be treated the same as barge grain in Chicago. Both should be treated as a local movement.

Q. That is two answers. Take up the proportion on which they should be treated the same. Is it your position in this case that if the proportionals are to continue to apply on ex-barge grain, they should be made applicable on ex-truck grain?

A. We think it would be fair.

Q. Do you think it should be done?

A. I am not recommending it.

Mr. Day: Now, Mr. Examiner, Mr. Belnap's question deals with discrimination or the question of prejudice and preference. Now, obviously, I think Mr. Belnap ought to know that where prejudice or preference is found, the carriers have the alternative of either eliminating the one or [fol. 624] giving the other the same as the first has. It isn't a question of curing a discrimination by one means alone. The carriers have the option of doing it either way.

Mr. Belnap: I didn't ask what the carriers should do.

Mr. Day: You are asking him about the question of preference and prejudice. That, as I say, can be done in either one of two days, in a case like this.

Mr. Belnap: I still ask him if he complains of discrimination. He says he does.

Mr. Day: Yes, but you or this witness wouldn't be able to dictate to the railroads how they would cure a discrimination.

Mr. Belnap: I am not asking to dictate to the railroads. I am asking as to the interest of this man and his members to have the proportionals applied on ex-truck grain on the assumption they will continue to apply on ex-barge grain.

Mr. Day: My objection is, you are assuming discrimination can be cured in only one way.

Mr. Belnap: No, the interest of his membership can be stated in only one way. I would like to know which way that is.

Mr. Day: You certainly aren't binding the railroads by any commitment of that kind.

Exam. Taylor: Is there any question about the question of making proportional rates on ex-barge grain in this proceeding, Mr. Belnap?

Mr. Belnap: The question is whether they should be con-
[fol. 625] tinued or not, as I understand it.

Exam. Taylor: Ex-truck?

Mr. Belnap: Ex-barge.

Exam. Taylor: Yes, sir, ex-barge. But now you are bringing in ex-truck.

Mr. Belnap: I am bringing it in only because the witness in his direct argued in some length that the present practice is discriminatory against ex-truck grain.

Exam. Taylor: Isn't that really elemental?

Mr. Belnap: I am trying to find out as to the personal interest of this Association. You can talk in the abstract about all sorts of discrimination. I should think the people and the Commission who appear before it would like to know what their interest is. I will desist if you think I shouldn't go any further with it. The witness obviously doesn't want to answer.

Mr. Brown: I think he stated what preference was.

Mr. Belnap: I shouldn't think a claim of discrimination is made in good faith and honesty if the real interests of the organization would be adversely affected by the proportionals on ex-barge grain, and from his general testimony, I am merely assuming that his interest would be adversely affected by that.

Mr. Cole: Mr. Examiner, haven't we overlooked another very important distinction between an I. & S. case and a formal complaint. A formal complaint, involving a com-
[fol. 626] plaint as to undue prejudice, of course, must show that somebody comes in and complains about it. When we have an I. & S. case, and this docket is an I. & S. case, the Commission examines not only the question of the reasonableness of the rate, but the act says examines as to the lawfulness of the rate.

Exam. Taylor: All questions are open in an I. & S. case.

Mr. Cole: That is correct; whether he complains about it or not.

Mr. Childe: Mr. Examiner, may I suggest on that point that the test of whether a rate is prejudicial or discriminatory is whether the prejudice or discrimination may be removed by either increasing the low rate or reducing the high, and then——

Exam. Taylor: That is fundamental.

Mr. Childe: Equally remove the discrimination. In order to test this witness' charge of discrimination, isn't it fair to find out whether what he complains of could be removed by either alternative?

Mr. Day: That isn't the way Mr. Belnap approaches it. He is confining his question to removing prejudice in one specific case.

Mr. Belnap: Only for the purpose of inquiry, what is the interest of this man who comes in and makes the charge; to test his sincerity.

Mr. Cole: Mr. Examiner, may I have the floor on that subject. I might perhaps make it specifically definite. In [fol. 627] an I. & S. case, we show you the various influences and again I say that nobody, including the Commission, would be interested at all in whether this man objected to it, if we show it is unlawful.

Mr. Belnap: To save time, I will pursue the point no further.

Mr. Cole: Thank you, Mr. Belnap.

Mr. Belnap: I am trying to get through with this case.

Mr. Cole: So am I.

By Mr. Belnap:

Q. Are you familiar with the rates east of Chicago and their application under the present proposed tariff?

A. Not in a detailed way.

By Exam. Taylor:

Q. But you did have knowledge of that New York rate that you mentioned?

A. Yes.

Q. You made specific reference to a proportional rate?

A. Yes, I did ascertain that the proportional rate or that

the rate which applied on ex-barge grain to New York was 26 cents.

By Mr. Belnap:

Q. Will that rate also apply on grain that moves from Bloomington, where you reside, to Chicago?

A. If shipped from Bloomington on an Illinois proportional rate to Chicago?

Q. Well, if shipped on whatever rate is applicable on rail from Bloomington to Chicago. Will that 26 cent rate apply when the grain moves east?

[fol. 628] A. If it were shipped on a local intrastate, it would not. If shipped on the Illinois proportional rate, it would.

Q. Is there an Illinois intrastate lake local non-transit restricted rate from Bloomington?

A. I don't know.

Q. Well, doesn't the exhibit show that there isn't any such rate from Bloomington, where you reside, then on a movement to Chicago, by the rail carriers' rate to Chicago, would that 26 cent rate apply yet?

A. I will have to hear the question.

(Question read.)

By Mr. Belnap:

Q. On a movement east.

Mr. Brown: As a part of the through movement.

By Mr. Belnap:

Q. Does it apply on the movement beyond Chicago?

Mr. Brown: As a part of the through movement, so performed.

By Mr. Belnap:

Q. Part of a separate movement from Chicago. What I want to know, how the tariff applies.

A. I can't answer any further than to say it is my understanding this rate applies from Illinois points only, when grain is shipped on what is known as the Illinois proportional rate.

Q. What is the Illinois proportional? Do you know anything about that?

A. I can't explain the intricacies of that.

Mr. Belnap: The witness just isn't familiar with the rates in which we are dealing.

[fol. 629] Exam. Taylor: Any further cross examination?

By Mr. Root:

Q. Mr. Farlow, can you state specifically an elevator in the vicinity of Morris that has been injured by the present practice of shipping of grain over the Illinois waterway under existing tariffs?

A. I stated in a general way that the elevators are adversely affected by these reshipping rates.

Q. Pardon me; you didn't understand my question. I am asking for a specific elevator. Can you name one?

A. Yes, Cullom Farmers Grain Company, Cullom, Illinois; Kempton Farmers' Grain Company, Kempton, Illinois; Essex Farmers Elevator, Essex, Illinois.

Q. Take one at a time. Explain how that particular elevator, the first one at Cullom, was hurt because of the waterway.

A. Those truckers are going into the territory and trucking a certain amount of grain from the farms directly to an Illinois River loading station, without giving the local elevator an opportunity to perform any service on that grain.

Q. Has that elevator operator at Cullom made any effort to sell grain personally or through an elevator located in Morris?

A. I couldn't explain the efforts he has made in that direction.

Q. Then you don't know whether or not he has tried to compete with people shipping over different avenues of transportation, do you?

A. He has complained to me he is being injured by this [fol. 630] truck competition.

Q. But you don't know whether he has endeavored to compete by using the same avenue of transportation that his competitors use?

A. No, sir, I don't know.

Q. And is it not true that these competitors are paying

the farmers more money than he can pay them and still ship it by rail?

A. Well, the difference is very slight. To a farmer, perhaps, residing in the territory near the river, they might pay a little more.

Q. Isn't it a fact the reason the farmer sells to one man rather than another one, where he can get the best price? We all admit that, don't we?

By Exam. Taylor:

Q. Do you understand the question?

A. No, sir, I don't understand the question.

By Mr. Root:

Q. I say isn't it generally recognized, the farmer sells grain where he can get the best price?

A. Yes, that is common practice.

Q. Well, you mentioned a man down in some other town. What was that, Kempton?

A. Kempton.

Q. Can you tell us how he has been injured?

A. He will be on the stand to testify himself.

Q. You don't know whether or not he has made any at- [fol. 631] tempt to make use of the Illinois waterway, do you?

A. No, I don't.

Q. Then your statements are rather general, without specific information, is that correct?

Mr. Day: I object to that. The statements of the witness stand in the record for what they are worth.

Exam. Taylor: Objection sustained.

Mr. Root: That is all.

Mr. Childe: I would like to ask a question.

Exam. Taylor: Mr. Childe.

By Mr. Childe:

Q. Do you speak for any producing farmers or just for elevator operators?

A. The organization which I represent is made up of farmers cooperative elevator companies, all of which are owned and controlled by farmers themselves, so that from

the—going back to the root of our organization, it is producer interest entirely.

Q. Are any of the farmers who are owners of these elevators located in the Illinois River Valley where they are getting the benefit of these higher prices?

A. Yes.

Q. And do those farmers who are now getting those benefits authorize you to come in here and try to get the rates increased to the east?

A. My board of directors authorized me to came here by [fol. 632] unanimous vote.

Q. And did they authorize you to seek higher rates from Chicago to the east?

A. They authorized me to support the cancellation of reshipping rates on ex-barge grain.

Q. Do they understand that you are here advocating an increase in rates on grain from the Illinois River territory to the east?

Mr. Enoch: I object to that.

Mr. Day: I object to that, whether they understand it or not.

Mr. Childe: May the witness answer?

Mr. Enoch: He hasn't any right to solicit business here.

Mr. Childe: I just want to understand the man's position.

Mr. Day: He has been authorized by unanimous vote of his board of directors, as I understand it, to come here and testify and support the proposed schedules.

Exam. Taylor: Isn't that sufficient information for you?

Mr. Childe: I would like to have the witness say whether they are seeking, actually seeking to increase the rate from Chicago——

Exam. Taylor: He stated he was authorized by his board of directors to come up here and defend this action.

Mr. Childe: I presume from that, the answer is yes, is that your understanding, Mr. Examiner?

Exam. Taylor: My understanding from this witness is [fol. 633] that his board of directors tells him to come up here and support the respondent's desire to make the proportional eastbound rates applicable on ex-barge grain. That is what he stated.

Mr. Childe: What I am trying to get at is whether these farmers or these elevators are merely complaining about

what they concede to be a discrimination, or whether they are asking the Commission to take only one action, namely to increase the rates.

Exam. Taylor: Well, put it in that form, then.

Mr. Childe: All right. Can you answer that?

Mr. Enoch: I object to that because I don't understand that there is any proposal here to increase the rates to 90 per cent or 99 per cent of the farmers in the state of Illinois.

Exam. Taylor: Put your question first. Your question is too general in the first place, Mr. Childe.

By Mr. Childe:

Q. What I am trying to get at, Mr. Witness, is this: Do your farmer elevators complain because they consider that the application of these proportional rates or reshipping rates from Chicago to the East discriminate against the rail shipper, or do they complain because they think that the rates are too low?

A. Well, it will take a rather long answer to answer his question.

Mr. Cole: Just a minute, please. We have, if the Examiner please, a definite proposal here, an I. & S. proceed- [fol. 634] ing. The tariffs have been filed and that tariff proposition proposes to do one thing in one way. And this witness has testified that he comes in and supports the respondents in doing the thing just that way. He hasn't complained because it has not been done another way. It is answered right in the record, just as clear as crystal, so I object to his question.

Mr. Childe: Mr. Examiner, I am asking whether the people he speaks of would be satisfied by the removal of what he considers to be a discrimination, the other way.

Exam. Taylor: What other way?

Mr. Childe: By reducing or applying the reduced rate on grain—

Exam. Taylor: What reduced rate?

Mr. Childe: The reshipping rate from Chicago to the East on grain that moves from their elevators by rail on the intrastate Illinois rates.

Mr. Enoch: I understand that question to be this: Does this witness object to making the proportional rate the local rate out of Chicago.

Exam. Taylor: Is that what you mean? I don't get the question at all.

Mr. Childe: As I understand it, this witness' testimony, he says that they got the railroads to put in lower intrastate rates from their shipping points to Chicago to meet truck competition. He says that the reshipping rates here [fol. 635] involved don't apply in connection with those rates, and that that is a discriminatory situation in comparison with the application of the reshipping rates on grain that moves by barge into Chicago. Therefore, he says he advocates the cancellation of the reshipping rates on the barge grains. Now, what I am trying to develop is whether the interests he represents would be satisfied if the discrimination was removed the other way, namely, by applying the reshipping rates out of Chicago in connection with the application of the Illinois intrastate rates inbound.

Mr. Brown: That is not before us, Mr. Examiner.

Exam. Taylor: It isn't before us, and furthermore, there would be, as I have seen from this record, those intrastate rates would be considerably higher than the barge rates to Chicago, in any event.

Mr. Childe: I don't believe that is a fact, Mr. Examiner. I think the record already shows what the comparative rates are. For instance, from Morris, Illinois, the record shows a claimed barge rate of four and a fraction cents.

Exam. Taylor: Yes.

Mr. Childe: And an Illinois intrastate rail rate of 5 cents; practically the same thing.

Mr. Brown: On corn only.

Mr. Childe: Now, the question I have in mind is if the reshipping rate applied in connection with the 5 cent rail rate, thus removing what he is claiming to be a discrimina-[fol. 636] tion, would that satisfy his complaint?

Exam. Taylor: The witness may answer if he knows.

The Witness: That subject has never been before our board of directors for consideration.

Mr. Childe: Thank you.

Exam. Taylor: Is that all, Mr. Childe?

Mr. Childe: Yes.

Exam. Taylor: Mr. Macaulay.

By Mr. Macaulay:

Q. Mr. Farlow, is it your understanding, as it was Mr. Culbertson's, that there are about 1,700 elevators in the state of Illinois?

A. Approximately that number, yes.

Q. And you stated that you represent 240 farmer elevators?

A. Yes, sir.

Q. Do you have any members around Paris, Illinois?

A. Well, it would depend on what you mean "around." We have members within 50 miles of Paris.

Q. Do you have any that are affected by the Paris market?

A. I haven't had any complaint from a member regarding the Paris market.

Q. Do you know whether the Illinois Cereal Company is in Paris?

Mr. Bradford: Mr. Examiner, is that involved here? We are short on time. There isn't anything in this complaint about Paris, Illinois.

Exam. Taylor: I don't see the point of this.

[fol. 637] Mr. Macaulay: They are making a big point that the barge movement is the source of their difficulties. I want to know whether or not at points which are beyond the scope of the river, they are charging any competition from trucks. In other words, it seems to me that if I can establish that at points beyond the influence of the river there are processing plants to which grain is being shipped, that that may explain some of the difficulties of the country elevators.

Mr. Bradford: I submit, Mr. Examiner, that is entirely outside of this proceeding.

Mr. Brown: Paris, Illinois, is only a few miles from Terre Haute, and so as to give you some idea of the location of Paris.

Mr. Macaulay: That is right, and that is why I say that, because I think it is a restricted area that is affected by the river movement.

Exam. Taylor: I think everybody will agree to that. These parties over here and the railroads will all agree to that, so why go into it.

Mr. Macaulay: I believe, however, that in his objections filed with the Interstate Commerce Commission, he stated

it would spell ruin to 90 per cent of the country elevators. If he is going to make a statement of that kind, I would like to show he restricted himself to a very small area.

Exam. Taylor: Did he say it on the record here? That is [fol. 638] not part of the record, you know.

Mr. Macaulay: That may not be part of the record but that is a statement he made which has an influence on the question of whether or not the rate, the rates should be suspended. Of course, first of all, I should probably ask if they maintain that position.

Exam. Taylor: Yes.

By Mr. Macaulay:

Q. All right, I will ask you if you still maintain the position that the reshipping rates on barge grain will work an injustice to 90 per cent of the country elevators of Illinois?

A. I never made the statement before, but I will say it now, that I do.

Q. And then will you still state that your members around Paris, Illinois, Terre Haute—well, you don't go into Terre Haute, but around Paris, Illinois, are affected by the barge traffic to Chicago, barge reshipping rates applicable at Chicago?

A. I said all of our members anywhere in the state were affected by that rate indirectly, in that the diversion of traffic from railroads to other forms of transportation necessarily means increasing the cost of transportation to those who continue to use railroad service.

Q. Have you found that to be a fact within the past ten years or five years that your cost has been increased?

A. Yes.

Q. And state the amount of that increase.

[fol. 639] A. 5 per cent, I believe.

Q. And the factor there is because of the loss of revenue to the barge?

A. I think that was a factor, an important factor.

Q. On what do you base your knowledge?

A. That is my opinion.

Q. On what do you base your opinion?

Mr. Macaulay: It is clear that the man doesn't have a basis for such an opinion.

The Witness: Yes, I can answer you. The records show that the diversion of grain traffic in Illinois in 1937 was about 5 per cent of the total grain movement. The Interstate Commerce Commission permitted rates on grain to be increased 5 per cent. Therefore, the two items seem to coincide and would indicate that must be the cause.

By Mr. Macaulay:

Q. You state that during that same period, there was the reduction in rail rates to Chicago in this intrastate area, in some instances as much as three-quarters of the rate?

A. I don't understand the question.

Q. In spite of the statement that rail rates have been increased by reason of the diversion to barge, and I presume you mean trucks also, because you testified about the influence of trucks; in spite of that loss of revenue, you say there is a reduction in the intrastate—reduction in the [fol. 640] rates by reason of the intrastate rates?

By Exam. Taylor:

Q. Do you still understand it?

A. I don't understand the question at all.

Mr. Macaulay: All right. Let me restate it.

Mr. Brown: You have already stated there has been a reduction in the state corn rates to Chicago. If that is what you want to get out of him, why don't you ask him that?

Mr. Macaulay: Yes, but it is during the period they were claiming an increased rail charge because of a diversion. I think it is clear.

Exam. Taylor: You withdraw your question? Is that all?

Mr. Macaulay: I will withdraw the question.

Exam. Taylor: Anything further?

By Mr. Macaulay:

Q. Are you familiar with the action of the cooperative grain dealers around Morris in establishing an elevator for themselves so that they might get the benefit of the river traffic?

A. Yes, I have been advised of their activities.

Q. Do you know whether or not their association is open to any of your members who might care to become members?

A. No, I don't know on what terms membership is open.

Mr. Macaulay: That is all.

Exam. Taylor: Anything further from this witness? (No response.) Anything on direct? (No response.)

(Witness excused.)

[fol. 641] Exam. Taylor: Next witness, please.

Mr. Brown: Mr. Marks, please.

VERNE L. MARKS, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name?

A. Verne L. Marks, Kempton, Illinois.

Q. What is your business?

A. Manager of the Farmers Elevator.

Q. Is the Farmers Elevator a cooperative elevator operated under the Capper-Volstead Act?

A. No, it is not. It is a cooperative organized under the Act of 1915. It is not a Capper-Volstead.

Q. Now, what is the capacity of your elevator at Kempton?

A. We have two elevators, approximately 15,000 pounds capacity each.

Q. Both under your management?

A. Yes.

Q. On what railroad are you located in Kempton?

A. The Illinois Central.

Q. What is your nearest railroad competitor?

A. About eight and a half miles.

Q. What direction is that?

A. Northeast.

Q. About how far is your elevator located from Morris, [fol. 642] Illinois, if that is the nearest water port elevator to your elevator?

A. It is about, approximately, 38 to 40 miles; some place between that.

Q. How long have your elevators been in operation at their present location?

A. The original company was organized in 1903.

Q. And the same elevator is still in operation?
A. Yes, sir.
Q. Did you understand from the conversations you have had with Mr. Farlow and others that the issue here is whether the Eastern railroads will be permitted to cancel the so-called reshipping rates on grain from Chicago applicable on grain that reaches Chicago by barge? Do you understand that?
A. Yes.

By Mr. Belnap:

Q. What was his answer?
A. Yes.

Mr. Brown: He understands that was the issue.

By Mr. Brown:

Q. Is any grain—first I want to ask you if you have ever trucked grain from your elevator to any points beyond Kempton?
A. I have.
Q. Where did you truck it to?
A. Chicago.
Q. When was that?
A. A year ago, in November.
[fol. 643] Q. Did you ever truck it before there was any barge operation?
A. No, sir.
Q. Why did you truck it to Chicago in this particular case?
A. Trying to meet truck competition.
Q. From Kempton?
A. From Kempton, yes.
Q. To Chicago?
A. To Chicago, yes.
Q. Do I understand that there is still truck competition from around Kempton to Chicago?
A. Not to Chicago; to Morris.
Q. To Morris?
A. Yes.
Q. Is any grain that is grown tributary to your elevator being trucked to Morris?
A. Yes.

Q. This grain, if it were not for the barge elevator, would naturally come to your elevator or to your nearby competitor?

A. Yes.

Mr. Belnap: Might I suggest that the witness not be led.

Exam. Taylor: Yes, try to eliminate leading the witness as much as possible, Mr. Brown.

Mr. Brown: You understand these witnesses are not used to association with men like Mr. Belnap all the time.

Exam. Taylor: Off the record.

[fol. 644] (Discussion outside the record.)

By Mr. Brown:

Q. Have you found that the trucking of grain from your natural territory to Morris has taken business away from you?

A. It has.

Q. Is that principally on corn?

A. Yes, corn and beans. A few beans this fall found their way to Morris.

Q. Have you been taking, some time this year, a lower rate on corn, so-called lake local, than upon other grain?

A. Only on corn.

Q. Only on corn?

A. Only on corn.

Q. Do you remember what that rate is?

A. 8½ cents.

Q. Do you know what your so-called Illinois proportional is?

A. 10½.

Q. Have you still another rate?

A. No, no other than the Illinois proportional.

Q. Have you got a——

A. We have got a local rate which applies to beans only of 12 cents.

Q. And that higher local rate of 12 cents would apply to any grain that came to Chicago that wasn't reshipped east?

A. If it wasn't for the lake rate, yes.

[fol. 645] Q. Have you found that this lake local rate of 8½ cents has helped you to meet the competition of the barge buyers at Morris?

A. Yes, it has; to the extent that if they will stay put, why, I can meet the competition with my 8½ cent rate. But there is a disadvantage when I arrive at Chicago on my 8½ rate, I have to stop, while the barge company go on with their New York grain.

Q. In other words, this barge rate gets this reshipping rate?

A. Yes.

Q. While your lake local doesn't get it?

A. Yes, because it stops at Chicago and I am discriminated against when I arrive here.

Q. It has been your experience that perhaps there was a discount in the price because your lake local rate hasn't the benefit of the reshipping rates from Chicago to the East?

A. It is, yes.

Q. That is your experience?

A. Yes.

Mr. Brown: That is all we have.

Exam. Taylor: Any questions by counsel? (No response.) Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. Who are the others with whom you talked to have the issues in this case explained to you, Mr. Marks?

[fol. 64f] A. I talked to Mr. Farlow.

Q. Mr. Brown said "and others," in his question to you.

A. Well, I talked to him this morning.

Mr. Brown: We met for the first time this morning.

By Mr. Belnap:

Q. When you ship on this lake local, you say the grain is at a disadvantage when it gets to Chicago?

A. It is.

Q. Can you measure that disadvantage in terms of money?

A. Well, taking a rate of truck and barge via Illinois River of approximately 7 to 7½ cents, my stuff arriving in Chicago on an 8½ cent local, I am discounted approximately a half cent a bushel.

Q. A half cent a bushel?

A. Approximately, yes, or a cent a hundred.

Q. Sir?

A. Or a cent a hundred.

Q. What happens to the grain that you move into Chicago on your 8½ cent lake local?

A. It is unloaded in the elevators in Chicago.

Q. It has to stop there?

A. It has to stop, yes.

Q. That is, it must be consumed, as you understand it, in the city of Chicago?

A. Supposedly, yes.

Q. That is your understanding of it?

[fol. 647] A. That is my understanding. It is a local rate.

By Mr. Root:

Q. Mr. Marks, what efforts have you made to take advantage of the shipping facilities over the Illinois waterways?

A. I occasionally sell to the Allied Elevators when their price is such that I can.

Q. The Allied——

A. Cooperative, or the Elevators Cooperative.

Q. Are you a member of that organization?

A. I am not.

Q. You are aware of the fact that you can become a member at any time you so desire?

A. I suppose I could.

Q. Well, I mean, that is general understanding in that community, that nobody that is a reputable man will be barred.

A. Yes, sir.

Q. Now, is your position in the grain business any different than the Farmers Elevator in Reddick or the two elevators in Dwight or the Farmers Elevator in Mazon, that is, with reference to so-called live competition that you mentioned?

Mr. Brown: He testified only about his own elevators.

The Witness: I don't know anything about the business of those elevators.

By Mr. Root:

Q. How is that?

A. I know nothing of the business of those elevators at all.

[fol. 648] Q. In other words, what I am trying to bring out is the fact that the trucker, whom you say is taking your business to Morris, would have the same opportunity to truck it from the Reddick elevator territory, would he not?

A. He could do it, but trucking from Reddick territory is lower than what it is at Kempton.

Q. All right, then he would be paying a little more for his grain. The Reddick man would be in a little worse condition than you are?

A. He is a member of the Allied Elevators. He is right in competition with trucking, which reaches me practically the same as Reddick on the northeast side of our territory, and that is the territory that I have to protect by selling some of my stuff to the Allied Elevator.

Mr. Root: I believe that is all. Or just one more question:

By Mr. Root:

Q. Do you have any knowledge as to whether or not the Reddick Elevator man has lost or gained business during the past year?

A. No, I wouldn't.

Mr. Root: I have no further questions.

Exam. Taylor: Mr. Macaulay?

Mr. Macaulay: No questions.

Redirect examination.

By Mr. Brown:

Q. Mr. Marks, did you already state for the record about [fol. 649] the distance via highway from your elevator at Kempton to Morris?

A. Yes, I said 38 to 40 miles; I just don't know exactly.

Q. And do I understand that you have accepted bids from the Allied Grain Co-operative Association, which was better for you than the Chicago bid, and you had the grain trucked to Morris instead of putting it through your own elevator for Chicago?

A. I did.

Mr. Brown: That is all.

Exam. Taylor: Any further cross examination of this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.
Mr. Brown: Mr. Potter.

CHARLES J. POTTER, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you please state your name and address?
A. Charles J. Potter, LaRose, Illinois.

By Mr. Belnap:

Q. What town?
A. LaRose.

By Mr. Brown:

Q. What is your business, Mr. Potter?
A. Grain, coal, building material and lumber.
Q. Where are your plants located?
A. Washburn, Illinois, LaRose and Campgrove.
[fol. 650] Q. The first two, are they located on the Alton Railroad?
A. That is right.
Q. On what branch of the Alton Railroad are those two elevators located?
A. Known as the Dwight branch.
Q. The branch running from Dwight to Washington?
A. Yes.
Q. And with another branch running from Varna to Lacon?
A. That is correct.
Q. Do you understand the issues in this case?
A. I think so.
Q. Merely the cancellation of the reshipping rates from Chicago on barge grain?
A. That is right.
Q. Has the Alton Railroad given you a state rate on corn to Chicago, generally known to the trade as the lake local?
A. Yes, they have.
Q. Have you been able to use those rates?
A. To some extent, yes.

Q. Do you sell any corn or other grain to any of the river point elevators?

A. I have.

Q. What points, particularly?

A. Henry and Lacon.

Q. How close are those points to your LaRose elevator?

[fol. 651] A. Lacon is 12 miles, Henry 18.

Q. And also is Washburn about the same distance?

A. About 5 miles further from both places.

Q. And was that grain that you took into your elevator and then trucked over to Henry or Lacon, or did you have the farmers deliver it directly at Lacon?

A. Some was taken from the elevator to the river, some was taken direct from the farm to the river elevator.

Q. On the grain you took into the river elevator and had trucked over to these river points, what was the reason for that, instead of sending it on by rail to some market?

A. The grain I brought into the elevator, the congestion at the river elevators would prevent me disposing of the grain when the farmer wanted to deliver it.

Q. In other words, there wasn't sufficient facilities on the river to take the grain at the time it was offered?

A. That is right.

Q. And you put it in your elevator and then later took it on over to these river elevators?

A. Yes.

Q. Was that because the river point elevator operator was able to bid you a better price than you could get at Chicago on any rates you would have to Chicago?

A. That is right.

Q. Has the barge movement or has the movement to these [fol. 652] river points from territory naturally tributary to your elevator increased?

A. Yes, it has.

Q. Is your position the same as stated by Mr. Culbertson and Mr. Farlow that you are supporting the railroads in their effort to cancel their reshipping rates on the barge grain?

A. I wish to see them cancelled, yes.

Q. You do?
A. Yes.

Mr. Brown: That is all.
Exam. Taylor: Any questions? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. What is your objection to selling to a river elevator at a higher price than you can get at Chicago?

A. I have an investment in the Alton Railroad not only in grain but in other allied lines of business, and if this branch of the Alton Railroad loses this grain business, the rest of my investment is a loss.

Q. That is your interest in the case?

A. That is, and maintaining by own business to operate it for myself there if I can.

Q. And to maintain that interest, you would rather be in a position where the bids for the grain which you handle are lower than they are when they come from the river?

A. That is a matter of opinion.

[fol. 653] Q. That is your opinion, however?

A. I wish to hold whatever business I can.

Q. And if it goes with that, if you have to sell grain for less money, you would like to do that?

A. I am offering a service as well.

Q. As far as the price itself is concerned?

A. If the farmer thinks the price is worth more at the river, then he will have to take it there.

Q. Your choice, however, will be to let him get a lower price and maintain your facilities?

A. I am a farmer as well.

Q. As far as facilities are concerned, your choice is he gets a lower price in order to maintain your facilities?

A. It isn't my wish to deprive the farmer of anything.

Exam. Taylor: Any other cross examination of this witness? (No response.) Witness excused.
Exam. Taylor: Next witness.
Mr. Brown: Mr. Colehower.

LOUIS J. COLEHOWER, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Will you state your name and residence?
A. Louis J. Colehower, Winona, Illinois.
Q. Where do you reside?
[fol. 654] A. I reside in Winona, Illinois.
Q. And what is your business and where is it located?
A. Country grain buyer and I have elevators on the Illinois Central and also on the Alton.
Q. Where is your elevator located on the Alton?
A. It is on the Dwight branch.
Q. On the same branch as Mr. Potter's elevators?
A. Yes, sir.
Q. And what is the name of the station there?
A. Winona. Both in the same town.
Q. Oh, you have one elevator on the Illinois Central——
A. And one on the Alton, yes, sir.
Q. Has your experience been just about the same as Mr. Potter's with respect to being required to sell the grain to river point elevators or lose it yourself?
A. Yes, I do some business with the rivers.
Q. Is that because you get a better price over there for the farmer than you do if you put it through your own elevator and ship to Chicago?
A. Yes, sir.
Q. Has the Alton also given you a state rate less than the interstate rates on your corn to Chicago?
A. Yes, sir.
Q. Have you made use of that rate?
A. Yes, it has helped me.
[fol. 655] Q. It has helped you?
A. Yes, sir.
Q. More than you had before?
A. Well——
Q. What is the general business on this branch of the Alton Railroad? Has the general business disappeared from it?
A. Well, yes, it has; very materially. I don't think outside of the grain that they haul much any more.

Q. Are you in the building material business as well?

A. No, sir, I am not.

Q. So that if all the grain was taken off the Alton Railroad, there would be very little use that the Alton would have for it, is that right?

A. Yes, sir.

Mr. Belnap: Mr. Examiner, I want to object to any further interrogation on that line.

Mr. Brown: He knows about the line. He says he is on it there.

Mr. Belnap: I object on the ground that it isn't relevant to the issues in this case; involving entirely the transportation service not on this branch of the Alton but east of Chicago.

Mr. Brown: The purpose of the question was to show that ultimately, if the grain business leaves this branch line, the Alton will have no use for it and will probably discontinue service.

[fol. 656] Exam. Taylor: This is an I&S case; the question is pertinent. Proceed.

By Mr. Brown:

Q. Have you anything further to say, Mr. Colehower?

A. I don't believe I have.

Q. Do you agree with Mr. Culbertson and Mr. Farlow that the railroads, Eastern railroads should be supported in their effort to cancel these reshipping rates on barge grain?

A. I do, yes, sir.

Mr. Brown: Take the witness.

Exam. Taylor: Any questions? Cross examine.

Mr. Belnap: None for me.

Mr. Root: No cross examination.

Mr. Macaulay: No questions.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Brown: Mr. Ewing, please.

R. A. EWING, was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Mr. Ewing, please state your name and residence.

A. R. A. Ewing, Malden.

Q. Is that a point on the CB&Q Railroad?

[fol. 657] A. On the main line of the CB&Q.

Q. About how far out from Chicago, do you remember?

A. 99 miles.

Q. Let's get that located. Is that somewhere in the vicinity of Mendota, Illinois?

A. 18 miles west of Mendota, 6 miles east of Princeton.

Q. Do you operate an elevator at Malden?

A. I am manager of the Farmers Elevator Company at Malden, Illinois.

Q. What is the capacity of that elevator?

A. 50,000 pounds. We have two houses there.

Q. How long have you been manager of those elevators?

A. 22 years.

Q. Have you, in doing business with the farmers naturally tributary to your territory, found that the grain has some of it been taken over to the river point elevators?

A. We attempted to take some over ourselves a week ago Tuesday, sold it with the understanding that they would take it right along. They took two loads that day, shut us off until Saturday; said they would take it Saturday afternoon. They took some loads so we sent two loads over. They sent it down to Dean Kink at Kankakee and he sent them up to the river elevator.

Q. What river point was that?

A. La Salle, Illinois.

Q. Who was the buyer?

[fol. 658] A. Continental Grain Company.

Q. Do you think that is treating the farmers right, to refuse service after they have bought it?

A. They can't get service for volume and we can't get trucks enough to handle the volume. There aren't trucks enough, contractors or river vessels enough to handle the grain.

Q. Do you make use of this so-called lake local rate on your line to Chicago?

A. Yes, we use a lake local to Chicago.

Q. Do you understand that the corn that you ship to Chicago on this lake local rate is entitled to the same rate east of Chicago that the barge grain now gets?

A. No, it is not.

Q. Is that harmful to you?

A. It most certainly is.

Exam. Taylor: Are you through?

Mr. Brown: Take the witness.

Exam. Taylor: Any questions by counsel? (No response.) Cross examine.

Cross-examination.

By Mr. Belnap:

Q. What is your lake local to Chicago?

A. 9½ cents.

Q. What is your interstate rate?

A. 12½.

Q. Are you sure of that or is it 12?

[fol. 659] A. 12½. That gave us a rate here last season from 12 to 12.5.

Q. Mr. Ewing, Mr. Tannehill's Exhibit No. 4 shows a 12 cent rate from Malden, 9½ cent intrastate rate.

A. I may be in error on that. I know there is a half to Peoria and I was under the impression that rate applied to Chicago.

Q. Do you make any shipments on which the interstate rate is paid all the way to Chicago?

A. Interstate is through billing, is that right?

Q. Just a rate to Chicago?

A. No, the local rate has been our favorable rate since we got it; practically everything I know of. That is, on corn. Of course, the oats and beans take the other rate.

Q. The oats and beans take the interstate rate?

A. That is my impression, most of the stuff has gone out that way.

Q. Oats and beans move on to Chicago on proportionals, do they?

A. Yes.

Q. The same as the barge rate does today?

A. That is my understanding.

Q. What you want as far as oats and beans is concerned is that the proportional not be applied to barge but to con-

tinue to apply it to rail shipments, or would your billing apply to them both alike?

A. From our treatment of the barge, you can guess what I think about the barge.

[fol. 660] Q. I am not asking about barge as a barge; I am asking about the traffic that moves.

A. Our investment is in Malden. We have been there for a long number of years and handle coal, grain, lumber and building material, and as far as a barge is concerned, it is a detriment any way that we can figure it at that distance.

Q. But as far as this proceeding and the issues in it, this is a controversy about rates?

A. Yes, sir.

Q. As far as your oats and beans are concerned, is there anything on which to base an objection on your part to treating the barge traffic the same as the rail traffic east of Chicago?

A. Oats and beans are small items; corn is a big item.

Q. As far as your oats and beans are concerned, have you any objection to having those commodities treated the same east of Chicago, from a rate standpoint, when they move in via barge and when they move it via rail?

A. No, I haven't.

Q. All right, now let's take your corn which moves on the intrastate rates. Is it correct that corn on which you ship on the 9½ cent rate is able to move on east on the proportional rates, if the inbound rate is averaged up to the interstate basis?

By Exam. Taylor:

Q. Do you understand that question?

A. No, I don't just quite grasp it.

[fol. 661] By Mr. Belnap:

Q. Do you understand about the application of the lake local versus the interstate rate and when they can be used?

A. Yes.

Q. When you ship corn on a lake local to Chicago, do you know what happens to the corn, where it goes to?

A. There is two ways, I believe. One is out over the Great Lakes system and the other is staying in Chicago.

Q. Being locally consumed?

A. Yes, that is my understanding.

Q. Do you understand there is a third alternative, that the corn can move on east by rail, and then in that event, the inbound line sets its charges up to the interstate rate?

A. Yes.

Q. You know about that, do you?

A. That is my understanding. There is a New York rate for corn from Chicago east that has been brought in that way.

Q. It can be used on the corn which you ship on the lake local, you understand that?

A. That is my understanding, but I am not a rate man.

Q. I don't want to ask you about the technical phase of it, except how they apply.

A. Yes, sir.

Q. You understand, when your corn which you ship on a lake local does move to New York on a proportional, what [fol. 662] is done as to the inbound rate?

A. My understanding is we are, on the railroads, penalized 8½ cents.

Q. You understand it is an 8½ cent penalty?

A. That is my understanding.

Q. And it is based on that understanding you come and testify in support of the carriers' proposal?

Mr. Enoch: I submit——

Mr. Belnap: I am asking the witness.

Mr. Enoch: You are confusing the witness also.

Mr. Belnap: Mr. Examiner, if Mr. Enoch didn't want to merely interrupt me but has an objection, I would like to hear it.

Mr. Enoch: I object because he is confusing the witness.

Exam. Taylor: The witness may answer if he knows.

The Witness: I am not informed, I don't know.

By Mr. Belnap:

Q. Now, I ask you, Mr. Witness, if it was on the basis of the understanding you just gave me that you come here and support the carriers in their proposal to increase the rates east of Chicago on ex-barge grain to the extent of 8½ cents? I should think you could answer that question.

Mr. Brown: He doesn't know it is 8½.

The Witness: May I have the question?

Mr. Belnap: Mr. Examiner, I am entitled to ask this witness that question.

[fol. 663] Exam. Taylor: Just a minute, now. The witness has asked the reporter to read the question.

(Question read.)

Mr. Belnap: I am objecting to Mr. Brown's interrupting.

Mr. Brown: I object, because it isn't always 8½ cents.

Mr. Belnap: But Mr. Examiner, the witness told me he had an understanding as to what would happen to his lake local traffic. I am not trying to prove whether his understanding is correct or not. I am asking him, is that on the basis of that understanding that he takes the position he stated in this case. It is certainly proper cross-examination.

Exam. Taylor: The witness may answer if he knows. Do you know, Mr. Witness?

The Witness: I don't know. The question really has got me confused.

Mr. Belnap: I don't want to confuse the witness at all, so let me state the situation as I understand it.

By Mr. Belnap:

Q. I have asked you about the lake local rate and you have told me it is restricted, as you understand it, when the grain actually goes on east, that grain is subject to a penalty of 8½ cents, that is your lake local. You are here advocating a change in the barge rate structures which will provide a penalty on that grain. I have asked you, did you take that position, did you come here because of your understanding that your shipments on the lake local rate are [fol. 664] penalized, as you have described them to be?

A. No.

Exam. Taylor: His answer is no.

By Mr. Belnap:

Q. That is not why you support the carriers?

A. No.

Mr. Belnap: Thank you.

Exam. Taylor: Any further questions of this witness? Witness excused and we will recess——

Mr. Cole: May I ask him one or two questions on redirect?

Exam. Taylor: Yes, Mr. Cole.

Redirect examination.

By Mr. Cole:

Q. Mr. Ewing, are you familiar with whether there exists east of Chicago a varying group of proportional rates, or do you think that there is only one proportional rate east of Chicago?

A. I am not familiar with the rates east of Chicago at all.

Mr. Cole: Thank you. That is all, Mr. Ewing.

Mr. Brown: I have just one question.

By Mr. Brown:

Q. Have you any financial interest in the grain after it is sold at Chicago? Have you anything further to do with it after it is sold in Chicago?

A. No.

Exam. Taylor: Anything further from this witness? (No response.) Witness excused.

(Witness excused.)

[fol. 665] Exam. Taylor: We will recess until 2 o'clock.

(At 12:30 o'clock P. M., recess taken until 2 o'clock P. M.)

[fol. 666] AFTERNOON SESSION

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Taylor: Mr. Belnap, are you ready?

Mr. Belnap: Yes, sir.

Exam. Taylor: All right. Mr. Tannehill recalled to give some information that Mr. Belnap asked.

W. T. TANNEHILL was recalled and testified further as follows:

Cross-examination (Continued).

By Mr. Cole:

Q. Mr. Tannehill, when you were giving your direct testimony, thereafter Mr. Belnap on cross-examination asked you whether any of the shipments shown on your exhibit 12 moved from origins in Illinois to a destination within Indiana. Since that question was asked you have you made an investigation on that?

A. May I correct you? Mr. Belnap's question was whether they moved from points in Illinois on the state rates to a delivery in Indiana in the Chicago switching district.

Q. That is correct.

A. I checked the freight bills on that and none of them moved to the American Maize at Roby or any other Indiana point that we could find.

By Mr. Belnap:

Q. Mr. Tannehill, if a shipment were billed from an [fol. 667] Illinois origin to a delivery in the Chicago switching district in Indiana would there be any expense bill issued on the shipment other than based on the interstate rate?

A. If it was billed from the country point direct to an Indiana point in the district?

Q. Yes.

A. It would be at the interstate rate.

Q. It would be the interstate rate, so it would never have any billing on it on the lake local basis?

A. That is correct, it would not have the Illinois state rates apply to it.

Q. That is right. Now, then, if any processor in the Indiana portion of the Chicago switching district purchased grain in car in the Chicago switching district and had it switched to his plant in Indiana, wouldn't the billing first issued on that car and registered with your inspection bureau show the interstate rate?

A. It might or it might be considered as two local moves, a local move to Chicago into a warehouse and then a local switching rate to that Indiana destination, interstate switching rate, but if it went out of that Indiana point under transit when the billing was cancelled for transit or applied to

an outbound shipment then the interstate rate would be assessed.

Q. But as to the purchase in car, of a car of grain, in car on track at Chicago, purchased and ordered switched to [fol. 668] an Indiana destination, aren't the freight rates collect- then at the termination of that move based on the interstate rate?

A. No, not necessarily, because of the nature of the movement. It might be localized at Chicago but when they finish it——

Q. I know what you told me about that.

A. All right.

Q. I am asking you about an inbound move.

A. No, it might be——

Q. Do you know what the fact is as to the way it is done?

A. It would be the local switching rate.

Q. You say it would be the local switching rate?

A. It is the local switching rate from the rails on the Illinois side to the other point.

Q. They pay two charges, one the lake local into Chicago?

A. One the local rate into Chicago.

Q. And then the switching rate?

A. And then the switching rate.

Q. Do you understand that is the way it is done?

A. And you will find I have——

Q. No, I just want to be sure about that, Mr. Tannehill.

A. Yes.

Q. And it is not the way that I describe it to you?

A. No.

Q. To charge the interstate rate at the termination of the move?

[fol. 669] A. No.

Mr. Belnap: All right.

Exam. Taylor: Any other questions?

By Mr. Belnap:

Q. Now, you understand I am talking to you about grain in car at Chicago that moved from the inspection track?

A. You talked to me about grain moving into an elevator in the——

Q. I didn't ask you about moving into an elevator, Mr. Tannehill.

A. Very well, then.

Q. I asked you about grain purchased in cars after arrival in the Chicago switching district, the grain being in a car on an inspection track.

A. Well, that would be one continuous move and it would be the interstate rate.

Q. That is what I asked you about. Then on that there would be no such thing as billing based on the interstate local, am I correct on that?

A. You are correct in that.

Mr. Belnap: That is all, thank you.

Exam. Taylor: Will that be all? Witness excused. Mr. Brown, next witness.

(Witness excused.)

Mr. Brown: Mr. Examiner, we have, I don't know, a dozen or more witnesses from the country and I suppose their stories will be pretty nearly alike. I would like to put on [fol. 670] three or four of them and shorten up the proceeding that way.

Exam. Taylor: Could you put on one witness that would be representative of the group and would the parties be willing to cut the other examination down to that extent?

Mr. Belnap: I cannot agree that any witness was representative of a group who do not disclose their position on the facts.

Mr. Brown: The trouble is they are not all situated the same distance from Illinois River points with their elevators and they are affected differently because of that and will be affected differently because of the activities of the barge buyers.

Mr. Belnap: I do hope that Mr. Brown won't put on cumulative evidence. Now, before lunch you put on two witnesses over on the same branch of railroad who had, according to their testimony, precisely the same interests in the case and testified precisely alike except that their names were different.

Mr. Brown: I think their locations were slightly different, weren't they? It doesn't make any difference.

Mr. Belnap: I mean there is no reason to have evidence of people who are separated a mile or two from each other and I hope he won't put on any cumulative evidence and try to drag the case on.

Mr. Brown: I will try to separate the evidence and put it on from different locations. I will put five or six on [fol. 671] anyway and they can tell their stories.

Exam. Taylor: All right.

Mr. Brown: Mr. Atherton.

Roy Atherton was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name, please.

A. Roy Atherton.

Q. Mr. Atherton, what is your business? First, what is your residence?

A. Walnut, Illinois.

Q. Is that located on the C. B. & Q. Railroad?

A. That is on the C. B. & Q. and also Normandie, Illinois, on the Chicago & North-Western.

Q. Will you state the situation in your territory as it affects your grain business, in your own language?

A. The river territory now by barge has opened up,—has been so close to us in the last two or three or in the last very, very few months. Late this fall the new Illinois barge was opened, or, rather, the new Illinois bridge was opened over the Illinois River to Hennepin.

Mr. Belnap: Pardon me, Mr. Examiner. Did the witness identify his business connection?

The Witness: I will now. I am in the elevator business at Walnut and Normandie.

[fol. 672] By Mr. Brown:

Q. These are all elevator operators.

Mr. Belnap: They are all going to be elevator operators?

Mr. Brown: They are not going to be much longer but they are now.

The Witness: This new bridge opens up the river outlet to our territory. Before that there was no elevator anywhere near us. Late this fall there was a new elevator opened at LaSalle and now the new river bridge across the river at Hennepin opens up that river outlet to our terri-

tory. Now, they haven't taken any corn away from us up to the present time but our customers now are just beginning to hear of better bids offered next to the river and we hear it every day. A man will call up and say, "What are you paying for corn?" And we tell him. "Well, how does it come the other man bid so and so over at the river?" So it is only going to be a very short time until this corn will get away from us and go to the river, the same as it is in the Morris territory, which we have heard for some little time, but, of course, it didn't affect us but it will. We know that because that is the history of what has happened in these other communities.

Q. Is there a river buyer at Hennepin?

A. Yes, sir, the Norris Grain Company is at Hennepin and that is about 28 to 30 miles from us.

Mr. Brown: That is all.

Exam. Taylor: Any questions? Cross-examination?

[fol. 673] Mr. Belnap: No cross-examination.

Cross-examination.

By Mr. Root:

Q. You mentioned, "The same as it is from the Morris territory." What do you mean by that?

A. Well, in the Morris territory I know that the elevators there lost grain to the river. Finally they had some adjustment in freight rates which I suppose helped ease their situation.

Q. Can you specify an elevator in the Morris territory that was injured by this practice of shipping over the water?

A. I know nothing of the grain business in that territory, only I know that it moved from there and that there was some adjustment made in rates.

Q. Then you don't know whether any elevator man has been injured around Morris or not, do you?

A. I know that the rate was changed from about 11½ to 5 cents and then tapered out. We went through those same things and I think most anyone close to these river elevators went through that thing. They tapered the rates out.

Q. What has that got to do with injury? What has that got to do with injuring the elevator operator is what I am trying to get at? That is the statement you made.

A. Unless an elevator on a railroad has a rate somewhat comparable to a river rate his business is going to get away from him to some extent. Now, they handle mostly corn at the river. I don't believe a farmer can take oats [fol. 674] down there. Suppose the corn business goes — the river and that leaves me nothing but, we will say, some oats and soya bean business: I cannot operate on that. Sooner or later these elevators will have to close down which are on a branch railroad. We are on a branch railroad——

Q. That is not responsive to my question. What I would like to get at is to prove that assertion.

Mr. Enoch: I think he should let the witness finish his answer.

Exam. Taylor: Yes, Mr. Root, I wish you would stop heading off a witness when he is trying to answer you.

Mr. Root: I am sorry.

Exam. Taylor: Had you finished?

The Witness: If our business is pulled down to a point where we don't have enough revenue to operate we would have to close. In the long run then it would be a detriment to the farmer unless he has a local elevator. Now, we handle lots of small lots. A man brings in a hundred bushel of oats or a small amount of beans. We get it together in carload lots and ship it out.

By Mr. Root:

Q. Had you finished?

A. Yes.

Q. I appreciate all that. Do you know anybody in the Morris territory, any elevator that is injured? You referred to that territory.

[fol. 675] A. I know nothing of the elevators in that territory, not personally; no, I do not.

Mr. Root: That is all.

Exam. Taylor: And other cross-examination? Anything on redirect?

Mr. Brown: No.

Exam. Taylor: Witness excused.

(Witness excused.)

Mr. Belnap: Mr. Examiner, as to this series of witnesses I think perhaps Mr. Brown and the people on this side of

the table could agree that he could call a great many people who will testify to certain facts. I would not want to stipulate as to the arguments of each one but I would be perfectly glad to stipulate as to the facts fundamentally, as I understand it, where the river transportation service is operating that prices are paid that attracts grain in that direction as against moving to an elevator on the railroad which would otherwise handle the grain on the rates which are contained in the tariffs which we have before us.

Mr. Brown: And that is going on for increasing distances away from the river points?

Mr. Belnap: I haven't heard anybody say about how far the distances are but I should assume it would go just as far as the lower cost on the river would let it go.

Mr. Brown: One man said this morning he was 38 or 40 [fol. 676] miles away.

Mr. Belnap: We have an example of a man 38 or 40 miles away.

Mr. Brown: Here is a man 28 miles.

Mr. Belnap: As far as the physical fact which these witnesses will present I am perfectly willing for my part to stipulate that he could call additional witnesses who had different locations up and down this river who will say that that is the circumstance in their immediate locality. That will shorten it, I think.

Mr. Brown: Here is another man from Walnut. I just want him to indorse, if he can, Mr. Atherton's testimony. I call Mr. Howard Smith.

Mr. Belnap: I will agree that he will say the same thing, if he came from this man's town.

Mr. Brown: I am going to see if he does indorse it.

Howard Smith was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name.

A. Howard Smith.

Q. Where do you live?

A. Walnut, Illinois. I am with the Walnut Grain Company, Walnut, Illinois.

Q. Did you hear what Mr. Atherton of Walnut said?
A. I did.
[fol. 677] Q. Do you indorse what he said?
A. I do.

Mr. Brown: All right. Go on home.
Mr. Macaulay: Let me ask one question.

Cross-examination.

By Mr. Macaulay:

Q. You say when Mr. Atherton said that he would lose his business to the river, did you understand that he meant that there would be a higher price paid to your customers by someone than you could afford to pay by rail?
A. That is right because of the haul condition on your river set-up.
Q. In other words, the producer would get paid—you are afraid the producer will get more and by reason of that will go down to the river rather than come to your place?
A. In my opinion the producer in the long run will get less. I happen to be the manager of a farmers' elevator which was organized in 1907 and we happen to be located in a good district there and all we ask is that we have an equal break.
Q. At the time that you lose grain it will be because of the higher price paid the producer. What the ultimate effect will be is open to some speculation, isn't that correct?
A. The fact is that some of our producers there are being offered more than what we could bid net our track right now.
Q. That is right.
A. And we cannot stay in business with that condition existing.

[fol. 678] Mr. Macaulay: That is all. That is what I wanted to bring out.
Exam. Taylor: All right, witness excused. Next witness.

(Witness excused.)

VINCENT EGAN was sworn and testified as follows:

Direct examination.

Exam. Taylor: Give your name to the reporter.
The Witness: Vincent Egan.

By Mr. Brown:

Q. Where do you live, Mr. Egan?
A. Postoffice address Deer Grove.
Q. Where is your elevator located?
A. We have elevators on the C. & N. W. commencing at Nelson, Van Petten, Hahnaman, Langley and Buda, on the North-Western. Since they opened the Hennepin bridge over the Illinois River the barge competition has confronted us at Langley. We have run into some cases just rendered us,—we have run into some cases just recently that we were forced to pass up and let the business go to the barge due to the fact that it actually cost us money to run it through the elevator to begin to compete with the barge, and as I get it from listening to the testimony given here and the cross examiners' questioning of the witnesses, that they try to bring out the fact that——

Mr. Belnap: Now, Mr. Examiner, I object.

The Witness: You can——

[fol. 679] Exam. Taylor: Just a second.

Mr. Belnap: I object for the witness to say what is trying to be brought out. I object to that kind of testimony.

The Witness: But under the circumstances, as it now stands the Continental, as I understand it, in the Morris——

Mr. Belnap: I object, Mr. Examiner.

The Witness: Well, the barge buyers or originators of grain on the Illinois waterway in the vicinity of Morris and territory adjoining thereto are attempting to originate——

Mr. Belnap: Mr. Examiner, I object. The witness cannot speak for somebody else. He is not qualified to. He is not answering questions put to him so I have a chance to object to the question. He is volunteering sort of argumentative comments.

Exam. Taylor: I would suggest that Mr. Brown take the witness and develop the facts. Will you take the witness?

The Witness: Well, the point I want to bring out is this——

Exam. Taylor: Just a minute now, Mr. Witness. There is an objection.

Mr. Belnap: I am awfully sorry.

By Mr. Brown:

Q. Mr. Egan, I want you to tell the Examiner whether you have lost grain at your elevators that would ordinarily have come to you, whether that was because of the bidding and taking away by the barge operators? Can you do that?

A. Yes, sir, we have.

[fol. 680] Q. Well, state it in your own language, just what elevators and to what extent you think they have taken the business away from you that ought to go through your elevators?

A. Well, they will take all the corn business because they can pay more money to the farmer than we can get loaded our track for rail shipment.

Q. And deliver it at Chicago?

A. And deliver it at Chicago, due to the fact that the transit billing is not applicable to the rail shipped grain on the lake local. Then on the west of us——

Mr. Belnap: I just want to be sure. Will you read that last sentence, because I think the witness explained the rate applications which had some effect.

Mr. Brown: The witness said he didn't have transit on his billing.

A. On the lake local rate.

Mr. Belnap: And for that reason he could not pay as much, is that right?

The Witness: That is right.

Mr. Belnap: Because I want to ask him about the tariffs and their applications.

Mr. Brown: You won't get much out of him because he never saw a tariff.

The Witness: On the west of us we are confronted with the water competition at Clinton, Iowa. At that point we [fol. 681] are eliminated as either a broker or grain operator due to the fact that the competitor there has a fleet of trucks and bids the farmer direct. In one instance he bid the farmer in combining time for his beans and sent their trucks out to the farm in the field and took the beans from

the combine and hauled them into the elevator at Clinton for shipment on the barge. So in that case, if it continues, I think the elevator and the railroad are both eliminated as a market factor unless we get a rate adjustment and, therefore, I am in favor of the present ex-barge grain being denied the all transit privilege to the East.

Q. I would like to ask the witness: Do you understand that that is the only question that is now before the Commission, namely, whether or not the cancellation of the reshipping rates to the East on barge grain should be cancelled?

Mr. Macaulay: I object to that. The tariffs themselves speak as to what is before the Commission. This party's testimony,—you stated that he wouldn't know a tariff, he is not acquainted with it. He certainly is not a qualified witness to state what are the issues before the Commission at this time.

Mr. Brown: Yes. He does know this, that that is the only way that is open to him in this issue and that is the cancellation of the reshipping rates on barge grain.

Mr. Macaulay: All right, let him develop that and state how he knows it.

Mr. Brown: I asked him that and he said "Yes".

[fol. 682] Exam. Taylor: Is that all?

Mr. Brown: Yes, sir.

Exam. Taylor: Any questions? Mr. Enoch?

By Mr. Enoch:

Q. Mr. Egan, does this buyer over in Clinton territory have a river elevator in Clinton?

A. They do.

Q. Does that same operator, that same buyer have a river elevator at Morris or LaSalle or Seneca?

A. They have one at LaSalle.

Q. As I understand it, you said that over in the western part of the state this particular Buyer buys direct from the farmer and takes it to his elevator but over on the Illinois River at LaSalle he buys through the country elevator up to this time?

A. That is right.

Mr. Enoch: That is all.

Exam. Taylor: Is that all? Any further questions? Cross-examine.

Cross-examination.

By Mr. Belnap:

Q. I want to ask you about when you have transit and when you don't have transit and all what happens under these rates. On what rate do you ship to Chicago?

A. We ship on the rate that we can get the highest bid located our track. That is up to the commission man when he puts the bid out. Whatever he can make out of his bid he has for his commission.

[fol. 683] Q. What is that rate ordinarily?

A. The Illinois proportional rate from our station is 12 cents and our lake local or intrastate rate is 10½ cents.

Q. And on which rate do you ordinarily ship?

A. Just as I stated before, whichever would net us most money located our track.

Q. I understood that but I say on which rate do you usually ship?

A. We usually ship on the lake local.

Q. What percent of your shipments move on the lake local?

A. Oh, I wouldn't want to try to say. Perhaps 75 per cent.

Q. And about 25 per cent on the interstate proportion?

A. Roughly speaking.

Q. Now, what do you understand about the lake local so far as the movement east of Chicago is concerned?

A. It is not applicable to corn originating in our territory. If it is billed on the lake local to Chicago that rate does not apply when it is shipped to points beyond.

Q. What rate does not apply?

A. The interstate rate, see, the transit rate.

Q. The proportional or reshipping rates do not apply?

A. No, the lake local rate does not apply.

Q. That is, if it moves east from Chicago they do something about the inbound billing?

A. Yes, sir.

[fol. 684] Q. They set it up a cent and a half——

A. That is right.

Q. —to the interstate basis?

A. That is right.

Q. And then the grain has the privilege of the reshipping or proportional rates?

A. That is right.

Q. And you would like to have that same thing done to the ex-barge grain, is that correct?

A. What same thing done?

Q. Set it up a cent and a half?

A. I didn't say that.

Q. Is that what you would like to have done?

A. I said I was in favor of having done what this meeting is called for to do.

Q. No, it isn't called for that.

A. I am in favor of the ex-barge grain being denied the privilege of transit rates due to the fact that we are not allowed the same privilege on an equal basis.

Q. When you say "we" you mean when shipping on the lake local?

A. That is right.

Q. Your objection, then, is to letting the ex-barge grain move east on the basis of the reshipping or proportional rates so long as the traffic which you ship on the lake local does not have the same privilege?

[fol. 685] A. That is right.

Exam. Taylor: He said something further, though, Mr. Belnap. He says, "on an equal basis."

By Mr. Belnap:

Q. What do you mean by "an equal basis"?

A. We are not in a competitive basis with the barge shipper today due to the application of that rate.

Q. That is, you have to pay 12 cents to be on a competitive basis?

A. Yes, sir.

Q. When you pay 12 cents you are on a competitive basis so far as the application of the rates is concerned, are you not?

A. No, sir. As far as the application of the rate?

Q. Yes, as far as the application of the rate east of Chicago you are treated alike then, are you not?

A. We are except that we are at a disadvantage due to the haul on the barge from the origin of the grain to Chicago.

Q. Yes, but there is a difference up to Chicago, you are charging?

A. That is right.

Q. But so far as east of Chicago, when you ship on the 12 cent rate, you have the same privileges that the ex-barge grain now has?

A. That is right.

Q. That is equality there, is it not?

A. As far as I know the same rate is applied to points [fol. 686] beyond Chicago.

Q. And equality is satisfactory to you as to that extent?

A. To points beyond Chicago.

Mr. Belnap: Yes. Thank you.

Exam. Taylor: Is that all?

Mr. Belnap: Yes.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. About what per cent of the grain around your territory is now trucked to Clinton, have you any idea?

A. Trucked to Clinton?

Q. Yes. You stated that some operator sent trucks into that area and took grain to Clinton, Iowa. Do you know about what per cent?

A. I don't know what per cent, no.

Q. Is there a substantial volume?

A. Well, the elevator that I am speaking of was just erected this fall down there and probably, of course, it takes a certain length of time for anything of that nature to become known and established.

Exam. Taylor: You are speaking of the elevator at Clinton?

The Witness: At Clinton, that is right. And, therefore, I suppose in six months from now it will be much more greater than it is now. The volume as yet is probably very small.

By Mr. Macaulay:

Q. Are you able to establish what effect the elimination of the barge reshipping rates on grain on the Illinois River [fol. 687] would have as far as the market at Clinton is concerned?

A. State that question again, please.

Q. Yes, I will state it simpler. Will the grain that will go to Clinton be affected one way or the other, in your opinion, by the elimination of reshipping rates from barge grain on the Illinois River?

A. Will it be affected by the reshipping rates?

Q. That is right.

A. You mean if they sustain this proposal they have here will it be affected?

Q. Yes, that is right. I might say for your information——

A. I don't think it will be, perhaps, at Clinton because I doubt whether the lake local rate goes as far as Clinton. It goes out to where the I.P. rate equalizes the lake local rate and then it is the same and I think the Clinton rate, when they adjusted those rates last spring, at that time we had no water competition at Clinton. Therefore, the railroads did not put in a lake local rate that far west, so at the present time it would make no difference whether the I.P. rate is the same as your lake local.

Exam. Taylor: Just for the record will you explain what "I.P." is?

The Witness: It is the Illinois proportional rate that takes the transit billing. Out of here it takes the 26 cent [fol. 688] rate to New York.

Mr. Belnap: The same as the ex barge?

The Witness: That is right.

By Mr. Macaulay:

Q. I don't understand that the elimination of reshipping rates from grain on the Illinois River will in any way be affected by grain that is brought to Clinton. Do you understand that it will?

A. The grain will be affected by the rate, this proposal here, you mean?

Q. That is right, yes.

A. No. I just said I didn't know as it would but the point was brought up here why can't the elevator sell to the barge, there is nothing that prohibits it. Well, there is. Under the present set-up the barge elevator establishes contacts with the farmers in the area down around Morris and uses the elevator man, as one witness said, as a broker. All right. In the other set-up in Clinton they go out and establish their own contacts with the farmer and it will be another situation, I suppose, that will come up later, but the point that I am trying to get at is that the grain will be affected in this Morris area and LaSalle and Hennepin because of the fact that as long as the elevator's hands are tied and if he does not sell to the barge they

will immediately contact the customers direct also and that will consequently mean the elevator will have to shut its doors, the railroad will be abandoned because what is [fol. 689] the use of having something there that you pay taxes on if there isn't any revenue coming in.

Q. But your competition would continue at Clinton irrespective of what happens at these hearings, isn't that right?

A. The barge competition will continue with us at Clinton, certainly.

Mr. Macaulay: Yes.

Exam. Taylor: Is that all?

Mr. Macaulay: That is all.

Exam. Taylor: Any other questions?

By Mr. Root:

Q. Is there anything to bar you now from making arrangements to ship your grain by water?

A. No.

Q. Are you acquainted with the situation at Morris, that is, personally acquainted with it?

A. No, I am not personally acquainted with it.

Q. Any reference that you have made, then, is hearsay?

A. Morris you said?

Q. Yes.

A. Well, I am speaking of Morris and the points tributary to Morris. It all arises on the same principle, does it not?

Q. I am just asking about Morris for illustration.

A. Well, speak of Hennepin, that is one point we have gotten in personal contact with.

Q. I just asked you one question, if you are acquainted [fol. 690] with the situation at Morris? That is what I would like to know, yes or no?

A. I am not acquainted with the situation at Morris but I am at Hennepin.

Q. I am not interested in Hennepin.

Mr. Root: That is all.

By Mr. Childe:

Q. I would like to ask one question. You say you compete with water transportation at Clinton. There isn't any movement by water from Clinton to the east, is there?

A. I don't know whether they move it east or not but it probably could be moved east. It goes down the Illinois River and it could move up the Illinois River if it was profitable to do so.

Q. Do you know where it goes from Clinton by water?

A. It probably goes south.

Q. You mean to the Gulf?

A. Probably.

Mr. Childe: That is all.

By Mr. Brown:

Q. Mr. Egan, are you on an equality up to Chicago with your 12 cent interstate rate with the barge competition?

A. No, we are not.

Mr. Brown: That is all.

Mr. Belnap: Up to Chicago?

Mr. Brown: Yes, sir.

[fol. 691] Mr. Belnap: That is where you are taking your all-rail service on the one hand and the barge service on the other?

Mr. Brown: No, I am taking his 12 cent interstate rate.

Mr. Belnap: I say I am talking about his service.

Mr. Brown: I wasn't asking him about his service. I was asking if he was on an equality of rates and he said he was not.

Mr. Belnap: Now you are asking him about some service.

Mr. Brown: I am not asking about service.

Mr. Belnap: I am, Mr. Examiner, if I may be permitted to.

Exam. Taylor: Will you state?

Mr. Brown: Are you able to tell him what the service is truck plus barge to Chicago?

Mr. Belnap: I ask my witnesses questions. I don't tell them.

Exam. Taylor: All right, state your question, Mr. Belnap.

By Mr. Belnap:

Q. I understand in answer to a question by Mr. Brown you said that as far as the freight rates paid are concerned you are not on an equality with barge competition when you use the 12 cent rate into Chicago, is that correct?

A. Up to Chicago.

Q. Up to Chicago?
A. That is right.
Q. You also get a different service, do you not, for your 12 cents than the man gets who pays the barge rate?
A. In preference to what?
[fol. 692] Q. A different kind of service. You are getting all rail service in one case and you are getting all water service in the other?

Mr. Brown: How does he know that he doesn't get the water service? Do you know?
The Witness: I have no way of knowing when you don't use the water.

By Mr. Belnap:

Q. You don't know whether it moves by barge or not?
A. No.

Mr. Brown: He says he has no way of knowing.

By Mr. Belnap:

Q. In other words, you are entirely ignorant of the fact that there is any movement of grain on this river?

Mr. Brown: He is entirely ignorant of the cost on the river, yes, sir.
The Witness: I don't think anyone does know the cost on the river.
Mr. Brown: You are, too.
Mr. Belnap: I don't think Mr. Brown ought to admit that the witness is ignorant. I don't think he is ignorant.
Mr. Brown: I didn't say he was ignorant. He is entirely ignorant of the cost.
Exam. Taylor: Is that all, Mr. Belnap?
Mr. Belnap: I would still like to find out. Mr. Brown keeps telling him something every time.
[fol. 693] Mr. Brown: Now, Mr. Belnap, suppose he gave you the answer you wanted would that affect or have anything to do with the cost on the river or would it have anything to do with the cost on the river even if he said "Yes" to your question?
Mr. Belnap: I think it is important to note that there is a difference in service. You pay one thing for one kind of a service. You pay something else for an entirely different kind of service.

Exam. Taylor: Well, isn't that elemental, again?
Mr. Belnap: I believe it is.

By Mr. Baxter:

Q. You said you were not on an equality with the barge rate?
A. That is right.
Q. If the barge rate is cancelled out would you be able to pay the farmer any more for your grain then than you do now?

Exam. Taylor: What do you mean "the barge rate is cancelled out"?
Mr. Baxter: If the ex-barge rate east of Chicago was cancelled.
Exam. Taylor: Oh. Well, you said "barge rate". I didn't get your question.
Mr. Baxter: I meant the ex-barge rate.

Q. Would you be able to pay the farmer or producer any more money than you are paying today?

Mr. Enoch: I think that question is too speculative to be [fol. 694] answered. How can this gentleman say what the price level is going to be a month from now or six months from now?
Mr. Belnap: Mr. Examiner, how can Mr. Enoch——
Mr. Enoch: How can the witness answer the question?
Mr. Belnap: Every time we ask him a question they try to suggest what to say. I think this man is intelligent and when it comes to saying "no" he can say it himself.
Mr. Enoch: The same thing is true with your people, you cut in on them right through. He cannot say what he is going to pay for wheat today or a week from today or a month from today.
Mr. Belnap: Sure he can.
Mr. Enoch: Let him tell it.
Mr. Brown: Mr. Belnap, how can he tell whether the rate by water will be reduced? He knows what his freight rate is today and what it costs him but how does he know about the other costs and whether he will be able to buy more or buy less?
Mr. Belnap: Is it appropriate, Mr. Examiner, to have counsel who do not make an objection to state something to

the witness and tell him what he does know and what he does not know before he can answer the question?

Exam. Taylor: I grant you there is something wrong about it and I think they ought to hold themselves in check.

Mr. Enoch: Mr. Examiner, I think that criticism that has been made certainly is not applicable to the last statement [fol. 695] I made the last time which was, in effect, in that I stated that the question was too speculative to be answered and in explanation I said it was impossible for this witness or any other grain buyer to tell Mr. Belnap and this Commission what he is going to pay for grain today or a week from now or a month from now.

Exam. Taylor: What was your question, Mr. Baxter?

Mr. Baxter: I am talking about present conditions. Now, he is coming in here and claiming that he is hurt by being on a disparity with river grain. I want to find out how the producers will benefit if the ex-barge rates are cancelled.

Q. How are you going to benefit your producer?

Exam. Taylor: The farmer, in other words.

By Mr. Baxter:

Q. If this barge rate is eliminated?

A. That question has been asked almost every witness that has been on here, as far as I know.

Q. I haven't heard it asked.

A. I have heard it asked. It might have been worded in different phraseology but it was asked.

Q. Can you answer it?

A. And the point is this: It looks to me like the barge line is trying to make themselves appear to the producer that they are sort of a Santa Claus. Now, how are they being Santa Claus? Aren't they getting——

Q. I am not asking that.

[fol. 696] Mr. Cole: He is answering your question.

Mr. Baxter: I want to know how are they going to benefit?

The Witness: They are going to try to put before the public or the Commerce Commission that they are paying more to the farmer originating grain on the river and that is going to be their fight to try to hold the thing as it is. Now, why are they paying it? You can't take blood from a turnip. There has got to be something there to start with

and if you haven't got a privilege over and above whereby you can bid something you can't pay more and that is what you have got. You have got a privilege there that we are not entitled to at the present time on our lake local rate on grain originating at the rail, shipped east, that you have got on the barge grain. So if you put our transit rate the same as the other I will answer your question by saying that we will be able to pay just as much as the barge, provided our rate is on an equality with the barge rate.

Mr. Baxter: That is all.

Mr. Belnap: Might I have that word "equality" explained there, Mr. Examiner? You mean the same rate up to Chicago?

Mr. Brown: All the way through.

The Witness: All the way through, the transit from orogin to destination.

By Mr. Belnap:

Q. Including the factor up to Chicago?

A. Yes.

[fol. 697] Q. If it is the same via the barge and via the rail?

A. Yes.

Mr. Brown: And all the way through, he says.

By Mr. Belnap:

Q. Yes, up to Chicago and then beyond and then everybody pays the same for transportation and one man could bid just the same as another man bids?

A. Then the barge line ceases to be Santa Claus over and above the rail shipper.

Q. Which wouldn't move any grain.

A. It has the same possibility to move grain as I would have. If you can pay the same for the grain as I can, then you can get the grain or I can get the grain. It is up to them then.

Exam. Taylor: Is there any more from this witness?

Mr. Belnap: I would like to know more about this price business.

Q. How do you fix the price that you are going to offer for grain?

A. I am going to fix the price for grain in accordance with the price that I am going to receive.

Q. Who tells you what you will receive?

A. Supply and demand.

Q. By letters?

A. By figures.

Q. How does it come to you, where do you get your information?

A. Wherever the buyer is, whatever he can pay me I will pay the farmers in accordance.

[fol. 698] Q. Oh, a buyer tells you, "I will pay you so much"?

A. Yes.

Q. And then you in turn make your price so that you have the middleman's profit?

A. Yes.

Q. Take the toll on the grain as it comes through?

A. The same as the barge.

Q. So what you can afford to pay the farmer depends entirely on what the buyer can afford to pay you?

A. That is right.

Q. And in that picture enters the cost of transportation to get it to the buyer?

A. Yes, and that is what I want to equalize.

Q. The less the transportation costs to get it to the buyer the more the farmer will get?

A. That is right.

Mr. Belnap: That is all.

Mr. Brown: That is all.

(Witness excused.)

ELMER GOLL was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name.

A. Elmer Goll.

Q. Mr. Goll, where do you reside?

[fol. 699] A. At Missal, Illinois.

Q. Please state where your elevator is located, Mr. Goll?

A. It is located at Missal, Illinois, on the New York Central Railroad.

Q. All right. Please state what your situation is in your own language.

A. Our situation is since the grain has started to move by barge we have had to reduce our cost of handling to the point where there is practically no profit in it for us as an elevator, but the farmers,—we have 40 farmer members interested in this elevator and they feel that rather than sacrifice the work and investment that they have put into this elevator, which amounts to about $30,000 and 35 years of work, they would rather that I would handle grain through this elevator at practically no profit than to let this grain move to the barge. They take the attitude that the railroads are essential to them; we give them a local service that the barges we do not feel can give to the farmer, and the railroads maintain their own right of way, pay local taxes, which is all a benefit to the farmer. We have trucked some grain to the river and we find that the benefit to the farmer figured about the cost of transporting that grain from the farm to the elevator, that was about the benefit he derived from hauling grain to the river points and if that is all the benefit they feel that they cannot afford to sacrifice the investment and service they have there to pay for that [fol. 700] little gain that they would derive by going to the river. They also feel that by the cancellation of ex-barge rates from Chicago on barge grain that we would be in position to pay the farmer more money than what we are able to pay at the present time.

Q. Mr. Goll, in short I understand your statement is that the farmer owners of your elevator would rather remain loyal to their elevator at less profits or no profits at all than to truck the grain over to the barge buyers?

A. That is right.

Mr. Brown: That is all.

Exam. Taylor: Any questions? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. How do you arrive at the price you will pay for grain?

A. Why, we take the close on the Board of Trade every day and we base our price on that plus the bids that we

receive from processors of grain at different points throughout the country.

Q. And do I understand you to say that if the proportional rates were made non-applicable on ex-barge grain that you think the closing price on the Board of Trade from that fact alone would be increased?

A. From my experience on grain that we have shipped to the Chicago market we have had several incidents where grain shipped in on the local rate would sell from a half a cent below the price paid on I. P. rates, than grain that [fol. 701] carriers the reshipping privileges.

Q. That is, a half of one cent below per bushel?

A. That is the——

Q. That is per bushel you mean?

A. That is right.

Q. That is your experience?

A. Yes, sir.

Q. What is it going to do to the Chicago Board of Trade prices, is what I am asking you, if the eastern carriers are permitted to cancell the application of the proportionals east of Chicago on ex-barge grain?

A. Will you state that question again, please?

Q. Yes, sir. I want to know from you what the effect on the Chicago Board of Trade prices, closing prices, will be if the eastern carriers are permitted to cancel the application of the proportionals on ex-barge grain? Do you think it will have any effect?

A. As far as the effect on the price on the Chicago Board of Trade, I would not be familiar with that but I would say that I believe that the buyers could pay more money to us out in the country if we had the same privileges as ex-barge grain.

Q. Are you familiar with what any of your buyers could afford to pay you dependent upon whether or not they have to pay more or less than they are now paying in order to get the grain east?

A. I believe the buyers could pay more if we had the [fol. 702] same reshipping privileges out of Chicago on rail grain as we have on barge grain.

Q. What you are saying is that if they remove the restriction from the lake local so that that rate could be used in connection with a transit shipment beyond, that you would get more money?

A. Yes, sir.

Q. And that is what you meant that under certain conditions you would be able to pay more for grain?
A. That is right.

Mr. Belnap: I misunderstood you. Thank you. I think you are right.
Exam. Taylor: Any further questions?

By Mr. Enoch:

Q. I would like to ask right there, when you say you would pay more money you mean relatively more than you are paying today?
A. Yes.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Do you have any farmers other than your 40 members from whom you buy grain?
A. We have a patronage of about 120 farmers.
Q. So that about one-third of your patrons are involved in the question as to the maintenance of the elevator?
A. Yes, that is right.
Q. Can you estimate about how many bushels are in-[fol. 703] volved in a year's time?
A. Our average is about 300,000.
Q. And you say your original investment is about $30,000?
A. Yes, sir.
Q. Would you say that that is the present value of your elevator?
A. Yes, sir.

Mr. Macaulay: That is all.
Exam. Taylor: Anything further?

By Mr. Root:

Q. How far are you from Morris? How far is your elevator located?
A. From Morris we are located about 35 miles south and west.
Q. Would you be closer to Seneca then than you would be to Morris, wouldn't you?
A. Well, yes.

Q. Is there any bar of which you are aware which would prevent you from *from* becoming a member of the Allied organization and selling or shipping through their Seneca house?

A. I would say directly no. I believe that I stated the objections to that, though, in my original statement.

Q. There isn't any bar. If you wanted to you could join it, isn't that right?

A. Yes, I could.

Mr. Root: That is all.

Mr. Brown: Is the Allied soliciting membership here?

[fol. 704] Mr. Root: Yes, we will take anybody that wants to join. Do you want to join?

Mr. Enoch: What are your terms? I would be interested in that. You have got something there, maybe.

Exam. Taylor: Anything further from this witness? Witness excused. Next witness.

Mr. Brown: These fellows like to select their own company, that is all.

(Witness excused.)

E. J. Olson was sworn and testified as follows:

Direct examination:

Exam. Taylor: Give your name to the reporter.

The Witness: E. J. Olson.

By Mr. Brown:

Q. Mr. Olson: Where do you reside?

A. At Standard, Illinois.

Q. Is that where you run an elevator?

A. Yes, sir.

Q. On what road is it located?

A. On the Chicago, Milwaukee & St. Paul.

Q. What is the nearest river point barge buyer to Standard?

A. Hennepin.

Q. How far away is that?

A. About eight miles.

Q. Please state what the situation is there in your vi-

[fol. 705] cinity and as it affects your elevator.

A. We are located in what they call the big bend of the Illinois River. The Hennepin elevator, as I stated, is eight miles west of us and an elevator at La Salle, about ten miles northeast of us. I want to say that the business—we have lost lots of business to the river in that I mean we have moved grain to the river through our elevator. I must say that the river elevators treated us very fairly and we have no complaint except in some cases, as one gentleman stated before, that the facilities are not great enough to handle the grain as fast as they should. In 1938 we sent about 110,000 bushels to the river. Our annual bushelage runs about 175 to 200 thousand. This year I think perhaps 75 per cent has gone to the river.

Exam. Taylor: You are speaking of corn now?

The Witness: In corn and beans.

Mr. Enoch: When you say "beans" you mean soya beans?

The Witness: Soya beans, yes, sir. Our point in appearing at this hearing is that we appear for the—we feel that the barge has an advantage over us, their bid being around two cents better than we can pay at the rail station and being located on a branch of the Milwaukee Railroad which is only about 12 miles long from where they leave the leased line that they run their trains over, if they lose this grain business very much longer we are afraid that they will abandon the railroad and our company has an investment there of perhaps 25 to 30 thousand [fol. 706] dollars, which would not be worth very much in case the railroad should be abandoned and we feel, our directors and stockholders feel that we must try to keep that property; naturally we don't want to lose any money on it and that is our main objection, is that we are afraid in the future we will lose this railroad and then our property, as you know, of course won't be worth very much.

Exam. Taylor: Is that all?

Mr. Brown: That is all.

Exam. Taylor: Any questions?

Mr. Bradford: I would like to ask Mr. Olson a question.

Q. Mr. Olson, you handle other commodities than grain, don't you?

A. Yes.

Q. What other commodities, building materials?

A. Building materials and coal, wire.

Q. If this branch line of railroad is abandoned could you stay in that business?
A. No, we could not.

Mr. Bradford: That is all.
Exam. Taylor: Is that all? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Do you use the tracks in handling any of that other business of yours?
A. Partially.
Q. How?
A. On some commodities.
[fol. 707] Q. To places where there is railroad service would you still use a truck?
A. On some commodities.

Mr. Belnap: Thank you.
Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. How long has your elevator been located at that point?
A. Since 1912.
Q. You say that there has been a river elevator at Hennepin,—there is a river elevator at Hennepin?
A. Yes, sir.
Q. How long has that been there, do you know?
A. Well, under the present management I think about 3 years.
Q. And before that how long?
A. Well, it has been there for longer than I can remember.
Q. I see. So that that competition was probably there at the time you erected your elevator in 1912?
A. I think perhaps so but there were no trucks at that time and it was too far to move by anything else but the rails.

Exam. Taylor: There wasn't any barge then either, was there?
The Witness: Very few.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: Yes.

Exam. Taylor: Any further questions?

Mr. Childe: May I ask the witness whether he has been [fol. 708] informed by the railroads that they are going to abandon that line if they do not get this grain business?

The Witness: No, I have not.

Mr. Childe: Thank you.

Exam. Taylor: Anything further, Mr. Brown?

Mr. Brown: No.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

R. F. GUENTHER was sworn and testified as follows:

Direct examination:

Exam. Taylor: Give your name so that the parties over on the other side of the room can hear you.

The Witness: R. F. Guenther; Cedar Point.

By Mr. Brown:

Q. Mr. Guenther, do you operate an elevator at Cedar Point?

A. We do.

Q. On what railroad is it located?

A. That is on the Chicago & Milwaukee.

Q. Is your situation somewhat the same as that described by Mr. Olson, except that you are probably a little nearer the river?

A. It is, with the exception that our territory borders the river on the north and south.

Q. Do you wish to make a statement on your own ac- [fol. 709] count or do you wish to indorse what Mr. Olson said?

A. Well, our condition is practically the same, so I will just indorse the same as Mr. Olson, his testimony.

Mr. Brown: That is all.

Exam. Taylor: Is that all? Cross examine. Witness excused; next witness.

(Witness excused.)

Mr. Brown: Mr. Noder.

MIKE NODER was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name, Mr. Noder?
A. Mike Noder.
Q. Where are you located, Mr. Noder?
A. McNabb, Illinois, on the New York Central.
Q. Is your situation somewhat similar to that described by Mr. Goll who is located at Missal on the New York Central?
A. No, I am in a worse place than he is, I think. I have had to haul practically all of our grain to the river. I haven't shipped any corn on the rail for sixty days and I shipped two cars of beans by rail. The rest of it all had to go to the river.
Q. Is that because the river bid was better to the farmer than you could afford to pay by rail?
A. Yes.

Mr. Brown: That is all.
[fol. 710] Exam. Taylor: Any questions? Cross examine. Witness excused; next witness.

(Witness excused.)

Mr. Brown: This will be the last one. Mr. Pein.

N. R. PEIN was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. State your name, please.
A. N. R. Pein.
Q. Mr. Pein, where are you located?
A. At Minier, Illinois.
Q. Do you operate an elevator there?
A. Yes, sir.
Q. Please state on what railroad it is located and its location with respect to Pekin and Peoria, Illinois?
A. I am located on the Pennsylvania, the Alton and the traction. These stations are approximately 25 miles from

Pekin. We have had the most loss of grain from our Tazewell station on the Pennsylvania. This loss has gradually been getting a little greater for the last couple of years. We have been able to hold most of our grain at Minier and on the traction, it being a little farther away from Pekin, but this grain is being held mostly for the reason that we have reduced our handling charges. We are not wanting to get our people accustomed to going to the river, hoping that this condition or these rates might be equalized, as [fol. 711] we need,—we haven't hauled any grain ourselves to the river because we are going to need our railroads and if this grain all goes away, if this grain all gets away, we are located on the Pennsylvania, on a branch line, and it is running very few trains as it is.

Q. What is your nearest rail market? Is it Peoria?

A. Peoria is the nearest terminal market.

Q. Do you know what your rate is, your rail rate is to Peoria?

A. 8 cents.

Q. Do you know what your rail rate is to Chicago?

A. 12½ Illinois proportional.

Q. You have no so-called lake local rate on corn that is lower than your interstate, have you, to Chicago?

A. I don't think so.

Q. Notwithstanding this 8 cent rate, which seems to be a reasonable rate as far as I know for what the distance is to Peoria, you are still losing grain to the river at Pekin?

A. We are.

Mr. Brown: That is all I have got.

Exam. Taylor: Any questions? Cross examine.

Cross-examination.

By Mr. Macaulay:

Q. Is any grain trucked from your community other than to the river?

A. Not that I know of.

Q. Any trucked to Decatur?

[fol. 712] A. Not that I know of. We are about 60 miles from Decatur.

Mr. Macaulay: I see.

By Mr. Childe:

Q. I understand that you ship your grain by railroad at the present time?

A. We do.

Q. Where does it go principally?

A. Peoria, St. Louis, Indianapolis, Chicago.

Q. Is Chicago the principal market or do you ship mostly somewhere else?

A. That all depends where the demand is. We might ship a long time to Chicago and then again we might not ship any for a long time.

Q. Do you handle principally corn?

A. Corn and beans; corn and soya beans, oats and wheat.

Q. Do you do any shipping to the south, I mean beyond St. Louis?

A. No, we don't—well, I will take it back. We might ship some oats into the southeast.

Q. As far as the corn is concerned St. Louis would take it if it is going in that direction, as I understand you?

A. Yes, St. Louis at times gets a lots of our corn.

Mr. Childe: That is right.

Exam. Taylor: Is that all from this witness?

Mr. Macaulay: I hadn't quite finished.

Mr. Childe: Oh, I beg your pardon.

By Mr. Macaulay:

Q. When you stated that you had to reduce your handling [fol. 713] charges, the benefit of that went to the farmer in the higher price than you would otherwise pay, is that right?

A. Yes, sir.

Mr. Macaulay: I see.

Exam. Taylor: Is that all? Witness excused. Next witness.

(Witness excused.)

Mr. Brown: I think we are finished with the farmer witnesses, or at least we have had representative witnesses.

Exam. Taylor: Mr. Brown, didn't you have an exhibit you were going to put in?

Mr. Brown: Yes.

Exam. Taylor: What happened to it?

Mr. Brown: Is Mr. Benson here? We expected to get him on yesterday and he has distributed his exhibit, except I think you handed me back yours.

Exam. Taylor: Yes.

Mr. Brown: Mr. Benson, please take the stand.

Mr. Macaulay: I want to ask whether he is being put on as a witness for the Board of Trade or representing whom?

Mr. Brown: He is going to tell you that if you wait a minute.

S. H. Benson was sworn and testified as follows:

Direct examination.

[fol. 714] Mr. Brown: Mr. Benson is the assistant manager of the transportation department of the Chicago Board of Trade and is introducing an exhibit, a statistical exhibit that shows the principal receipts, I believe, of Chicago grain, of grain in Chicago and production, I believe, in Illinois for a series of years, purely a statistical exhibit.

Exam. Taylor: Give your name to the reporter.

The Witness: My name is S. H. Benson. I have been connected with the transportation department of the Chicago Board of Trade for the past 32 years and for 9 years prior thereto worked in the traffic department of railroad companies.

By Mr. Brown:

Q. Have you an exhibit you wish to introduce?

A. Yes, sir.

Q. Will you please explain the exhibit as briefly as possible?

A. I desire to present an exhibit containing statistics obtained from the records of the Chicago Board of Trade covering the receipts of grain at Chicago for a series of years via all routes and forms of transportation. Also, there is shown in this exhibit the production of corn in Illinois for a series of years. The first seven sheets of this exhibit show the receipts of all grains at Chicago via all routes for the years 1932 to 1938, inclusive. Prior to 1932 the grain received at Chicago was principally by rail, some by lake, but none by barge or truck. Beginning with 1932 grain was trucked to Chicago and beginning with 1933 grain

was first received at Chicago by barge via the Illinois [fol. 715] waterway. Sheet number 8 is a comparison of the receipts of corn at Chicago via the various routes for the years 1932 to October 31, 1939, inclusive. On this sheet is also shown the production of corn in Illinois for the years 1931 to 1938, inclusive. Except for the year 1937 the receipts of corn each year at Chicago corresponded quite closely with the production of corn the previous year in Illinois. The corn production in Illinois in 1936 was next to the lowest of any of the eight years, ranking seventh; but the total receipts for 1937 ranked fourth. This was because the receipts in 1937 included 18,720,000 bushels of corn substantially all of which was transported to Chicago via all water from South America and Africa. Deducting the corn received by lake from the total receipts, the remainder, or 48,007,000 bushels, ranked seventh and corresponded with the production of Illinois corn the previous year. The corn received at Chicago by rail, truck and barge comes principally from Illinois. As is well known to the grain trade, under normal conditions there is practically no corn shipped to Chicago by lake. The first movement of any consequence of corn to Chicago by lake was in 1935. For the years 1890 to 1934, inclusive, a period of 45 years, a total of 137,000 bushels of corn was received at Chicago by lake. In 1935 about three and a half million bushels of corn was shipped to Chicago by lake from Buffalo and Georgian Bay ports. This was mostly domestic corn grown in the United States, some of which was originally shipped [fol. 716] from Chicago and was reshipped back to Chicago from the lake ports on account of the shortage of corn in the west. Some of the corn received at Chicago by lake in 1935 was imported. The 1934 production of corn in Illinois was about 146,000,000 bushels, the lowest of all the years. In 1936 the corn receipts at Chicago via lake amounted to 767,000 bushels, shipped from Montreal and Collingwood, as shown on sheet 6 of this exhibit. In 1937 there was again a shortage of corn in the west and in the United States generally and substantially all of the eighteen and a half million bushels of corn which arrived at Chicago in 1937 by lake came from South America and South Africa. This imported corn was needed to enable our processors to continue in business. In 1937 most of the corn received at Chicago by rail and by barge was subse-

quent to August. The receipts by rail amounted to 28,652 cars, of which 19,305 cars, or 67 per cent, arrived in the last four months. The receipts by barge amounted to 2,019,000 bushels, of which 1,170,000 bushels, or 58 per cent, arrived in the last four months. The last lake vessel containing imported corn was unloaded in September. In other words, the importation of corn ceased with the coming of the new crop of domestic corn. In 1938 the movement of corn to Chicago via lake consisted of 60,000 bushels from Duluth. In 1939 there was no movement at all to Chicago of corn via lake. Sheet 9 shows the receipts of grain at Chicago via the various routes for the first ten months in 1938. Sheet 10 shows the receipts of grain at [fol. 717] Chicago via the various routes for the first ten months in 1939. Sheet 11 is a comparison of the receipts of corn at Chicago via the various routes for the first ten months in 1938 with the first ten months in 1939, there being shown the percentage via each route of the total receipts for each of those two periods. In 1939 the receipts via the Illinois waterway amounted to 14.85 per cent of the total receipts for that year, while in 1938 they were 6.96 per cent of the total receipts for that year. Likewise, the receipts by truck were greater in 1939 than in 1938, both in volume and in the ratio of percentage of the total receipts. In 1938 the amount of grain trucked in was 1.56 per cent of the total receipts; whereas, in 1939 the trucked in grain was 5.08 per cent of the total receipts. With three slight exceptions the percentage of the receipts of grain via the various railroads, or groups of railroads, compared with the total receipts was less in 1939 than in 1938. The total receipts via rail in 1939 amounted to 51.04 per cent of the total receipts for 1938, but the total receipts via all the routes in 1939 were 58.21 per cent of the total receipts for 1938. This increase in 1939 over 1938 of the total receipts is accounted for by the heavier receipts in 1939 by barge via the Illinois waterway and by truck. Sheet 12 is a statement of the grain received by barge at the various Chicago elevators for the first ten months in 1938 compared with 1939. The increase in the 1939 receipts over 1938 was [fol. 718] 3,470,640 bushels, or, as shown on sheet 13, nearly 16 per cent greater in 1939 than in 1938. The greatest increase by barge in 1939 over 1938 was corn, the increase being 1,396,526 bushels.

Exam. Taylor: Before you leave that page, are those all river elevators in the Chicago district?

The Witness: They are all located on the waterway. Sheet 13 shows the increase or decreases in 1939 as compared with 1938 for each elevator. The Chicago elevators equipped to receive grain by barge and their location is shown on sheet 13. Sheets 14 and 15 show the receipts by truck and by lake vessels, respectively, and the elevators into which the grain was unloaded, this information being similar to that given on sheets 12 and 13.

That completes my testimony. I would like to offer the exhibit in evidence.

Exam. Taylor: It will be received in evidence.

Mr. Macaulay: I object to it being received in evidence.

Exam. Taylor: On what ground?

Mr. Macaulay: On the ground that I consider it to be ultra vires for the Board of Trade to appear in these proceedings. There is no basis for it under the legislative charter that was issued to the Board of Trade, there is no basis that I can see whereby the Board of Trade can take a position in these proceedings which is contrary to what we believe and which we think we can show to be the best [fol. 719] interests of the Chicago market and contrary to the interests of the farming community of Illinois. Now, that may be a technical objection, perhaps.

Exam. Taylor: Have you any reply to make?

Mr. Macaulay: I have the charter here, I have the rules and regulations of the Board of Trade to substantiate my position.

Exam. Taylor: Have you any reply to make to that, Mr. Brown?

Mr. Brown: This is the first time that I have known that the Chicago Board of Trade or a similar organization could not take part in these proceedings and especially in an I. & S. case. We think we are proper parties here and the time to make that exception, if he is going to make it at all, was before the witness said anything.

Exam. Taylor: Your objection will be noted on the record. The exhibit will be received.

(Exhibit 19, Witness Benson, received in evidence.)

Exam. Taylor: Had you finished with the witness?

Mr. Brown: Yes.

Exam. Taylor: Any questions?

By Mr. Enoch:

Q. I would like to ask you, on page 13, where in the Chicago switching district is the Irondale elevator?

A. The Irondale elevator is located at 107th and Muskegon Streets.

Q. Maybe I can shorten it this way: Are all of these ele-
[fol. 720] vators located in South Chicago or Calumet?

Mr. Brown: Not the Santa Fe.

The Witness: No, not the Santa Fe.

By Mr. Enoch:

Q. All but the Santa Fe?

A. The Santa Fe is located at 27th and Damen.

Q. The other elevators listed are in South Chicago or Calumet?

A. Yes, sir.

Exam. Taylor: Is that all? Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Does your exhibit include all the elevators in the Chicago district in which grain is stored?

A. Yes, sir.

Q. From what source do you obtain the information as to the receipts at these particular elevators shown on pages 13 and 14?

A. From the records of the Chicago Board of Trade.

Q. What is the character of those records? Where does the Board of Trade get its information as to the receipts at these elevators?

A. Well, for a great many years they have pursued the practice of getting this kind of information. I assume that the direct source would be the weighmaster's department.

Q. Does the Board of Trade regularly compile statements as to both receipts and shipments?

A. Yes, sir.

Q. And broken down in the same way that you have
[fol. 721] covered the receipts in your exhibit?

A. Yes, sir.

Q. Are those compiled by Mr. West, the statistician of the Board of Trade?

A. Yes, sir.

Mr. Belnap: Mr. Brown, would you be willing to supply for the record the same data for the same years as to the outbound shipments?

Mr. Brown: The same as pages 1 to 8?

Mr. Belnap: Yes, and to show which species of grain, how the grain moved from Chicago, out from Chicago, whether by lake or by rail or by what carrier?

Mr. Brown: Yes. It is usually shown in the annual report. That, of course, could not be furnished—I would like to submit it for a whole year because these first few sheets are for calendar years.

Mr. Belnap: I would like to have it for simply the same periods. whatever they may be, as are covered by your exhibit.

Mr. Brown: Well, will you go a little further with me and ask that we furnish also for the full year of 1939 compared with 1938 on sheets 8 to 15?

Exam. Taylor: Outbound shipments?

Mr. Brown: Oh, no.

Exam. Taylor: Outbound shipments?

Mr. Brown: No, just extending the information that is [fol. 722] here for a period of, in some cases, over ten months, ten months of this year.

Exam. Taylor: Now, Mr. Brown, as I understood Mr. Belnap's request he was only talking with respect to outbound shipments.

Mr. Brown: Yes, sir.

Exam. Taylor: Now, you want to extend this information to the end of the year, to the close of this year, is that the idea?

Mr. Brown: To complete the 1939 comparison with the previous year.

Exam. Taylor: And then to show the corresponding information as to outbound shipments in line with Mr. Belnap's request?

Mr. Brown: Yes, for all of the years 1932 to 1939, inclusive.

Exam. Taylor: Is that in line with your request?

Mr. Belnap: I did not request that latter but I have no objection to showing the full year. I think that would be desirable.

Exam. Taylor: How long will that take you, Mr. Brown?

Mr. Brown: Well, Mr. West usually does not furnish us those figures until about a week or ten days after the close of the year and then, of course, we will have to make some compilations of them to show the percentage of movement by the different forms of transportation.

[fol. 723] Mr. Belnap: Well, for the previous years—for this year up to about—you have them the same way, you have for the shipments the same way you have for receipts right now?

Mr. Brown: We would just fill that in and complete the year and make the computation just as we have on the other sheets.

Mr. Belnap: I am not talking about extending 1939. I say except for the extended period of 1939 you now have available, Mr. West does, all the information you need to make up the statement?

Mr. Brown: On the outbound shipments.

Mr. Belnap: On the outbound shipments.

Mr. Brown: Except for the remainder of this year, for 1939.

Mr. Belnap: That is right, I am not including that. I say for the rest of it you have it now.

Mr. Brown: Yes, sir.

Exam. Taylor: How long would you want then?

Mr. Brown: I would want at least ten days after I receive it. I would say maybe January 15th.

Exam. Taylor: Is that agreeable to everybody, January 15th, as to the furnishing of that information?

Mr. Belnap: Yes.

Mr. Brown: We surely won't have a brief before January 15th.

Mr. Belnap: Just so that we have it in sufficient time so that we have it for the brief.

Exam. Taylor: Yes.

[fol. 724] Mr. Brown: I will give it to you just as soon as I receive it from Mr. West.

Exam. Taylor: January 15th or sooner.

Mr. Belnap: I have no other questions.
Exam. Taylor: Any other cross-examination?

By Mr. Childe:

Q. I would like to inquire. Will you refer to page 14 of your exhibit, which purports to show grain received by trucks at various Chicago elevators?
A. Yes, sir.
Q. Does that cover the entire truck receipts of all Chicago elevators or only of those shown?

Mr. Brown: Only those weighed by our weighmaster.
Mr. Childe: Would there be truck receipts at other elevators which would not appear on this page?
Mr. Brown: There might be at other industries but not at other elevators where he does the weighing.
Mr. Childe: I would just as soon have Mr. Brown answer, I don't object to that, but I don't understand what seems to be a discrepancy in the figures on sheet 14 as compared with those on earlier sheets. For example, sheet 14 shows that from January 1 to October 31 these particular Chicago elevators received 2,634,354 bushels of corn and on page 7 it would appear that the total receipts of corn at Chicago trucked in was 2,627,000 for the entire year 1938.
Q. Can you explain that?
[fol. 725] A. In other words, there is a difference of 7,000 bushels.
Q. I beg pardon?
A. You say there is a difference of 7,000 bushels?
Q. No, more than that. One is for the period of January to October and the other is for the year, for the whole year, as I read it and there is in addition to that a discrepancy in the figures that you mentioned.
A. Well, we would have to go to the source of the information to determine just how that discrepancy occurred.

Mr. Childs: There are some discrepancies, Mr. Brown, that I won't go into in detail but when you submit your figures next January will you please state what the facts are about those discrepancies?
Mr. Brown: Well, you mean there is a discrepancy on page 14?
Mr. Childe: Yes.

Mr. Brown: Well, we will have to go after our weigh-master for that.

Mr. Childe: I don't take up any further time if you will explain that for the record, Mr. Brown.

Mr. Brown: Well, we will either explain it or correct the changes, change them. That will be the explanation.

Mr. Childe: That will be satisfactory.

Mr. Brown: We will check up on that, surely.

Exam. Taylor: Is that all you have?

[fol. 726] Mr. Childe: Yes.

Exam. Taylor: Any further cross-examination of this witness? Witness excused.

(Witness excused.)

Exam. Taylor: We will take a short recess.

(Whereupon a short recess was had.)

Exam. Taylor: All right, gentlemen, come to order, please.

Mr. Brown: I call Mr. Brennan.

JOHN E. BRENNAN was sworn and testified as follows:

Direct examination.

By Mr. Brown:

Q. Please state your name and residence.

A. John E. Brennan; Chicago, Illinois.

Q. In what business are you engaged and what is the name of your company?

A. I am engaged in the grain commission business and the name of my company is John E. Brennan & Co.

Q. Are you a member of the Chicago Board of Trade?

A. Yes. I have been a member for 32 years.

Q. Are you a director of the Chicago Board of Trade?

A. Yes. I am the senior director of the Chicago Board of Trade and have been a director for nine years.

Q. In addition to the board of directors are there committees composed of members charged with various duties relating to the activities of the Chicago Board of Trade, [fol. 727] are you a member of any such commitees?

A. Yes. I am a member of the executive committee, the grain committee, the clearing house committee, the membership committee and the to-arrive-grain committee and I am chairman of the last two committees.

Q. Mr. Brennan, are there other members of the Chicago Board of Trade in your line of business for whom you are also speaking?

A. Yes. I am speaking for 21 rail receivers of grain, all members of the Chicago Board of Trade, in addition, Mr. Brown, to the Board of Trade officially.

Mr. Belnap: I did not hear that last.

The Witness: In addition to the Board of Trade officially.

By Mr. Brown:

Q. Have you been empowered by these 20 or 21 members to speak on their behalf?

A. I have. I have a signed power of attorney to speak in their behalf. Would you care to have me present that?

Q. I think that we ought to present that list and see if there is any objection to it.

Exam. Taylor: Just exhibit it to counsel, if you will. Proceed, Mr. Brown.

Mr. Macaulay: Could those names be read into the record?

Mr. Brown: They will be made part of the record.

Mr. Belnap: I have been handed a document which is a power of attorney for Mr. Brennan to act in their behalf [fol. 728] at the hearing. I don't understand that you give anybody a power of attorney to testify as to facts. He knows the facts or he does not.

Mr. Brown: It gives power,—it indorses what he says; they indorse what he says. They give him the power to say that.

Mr. Belnap: I don't know whether they indorse it or not. They give him power to act.

Mr. Brown: It says here, "To act on their behalf at the hearing before the Interstate Commerce Commission in the proceeding".

Mr. Belnap: I don't understand that a witness under oath speaks to anything except the facts, Mr. Examiner.

Mr. Brown: Well, then we will have to bring these men over here and that will just take up more time. I think we

ought to withdraw Mr. Brennan so that they can be over here and hear him. There are about 21 names altogether.

Mr. Enoch: Now, if your Honor please, I haven't seen this but I have no doubt it is in the nature of a document authorizing Mr. Brennan to be here as a witness in behalf of these individuals shown here who have purported to grant him this authority. That is all it is.

Mr. Belnap: I haven't any objection to anybody appearing in the name of any certain group, who is in the same position as Mr. Brennan. The point I make is that when a [fol. 729] man comes to testify before the Commission at an Interstate Commerce hearing he comes here to give all the facts.

Mr. Brown: That is all he does. These men with whom Mr. Brennan has talked and has obtained their personal signatures, their views in the matter are the same as his.

Mr. Belnap: He doesn't have to have a power of attorney to state that.

Mr. Brown: Do you have any objection to these names going in as those whose views are the same as his?

Mr. Belnap: That take the same position as Mr. Brennan? Not at all, as far as I am concerned.

Mr. Brown: With that understanding may that list be copied into the record?

Mr. Belnap: That list may be copied into the record without any objection from me.

Exam. Taylor: Any objection from anybody else? Turn it over to the reporter.

(The document referred to is as follows, to-wit:)

"Chicago, Illinois,
November 25, 1939.

Mr. W. P. Bartel, Secretary,
Interstate Commerce Commission,
Washington, D. C.

DEAR SIR:

The undersigned grain commission merchants of Chicago, members of the Chicago Board of Trade, hereby authorize [fol. 730] and empower John E. Brennan to act in their behalf at the hearing before the Interstate Commerce Commission in the proceeding entitled Investigation and Sus-

pension Docket No. 4718, Grain Proportionals Ex-Barge to Official Territory:

E. W. Bailey & Co., Inc., by John J. Coffman.
James E. Bennett & Co., by F. W. Miller.
John E. Brennan & Co., by John E. Brennan.
E. M. Combs & Son, by E. M. Combs, Jr.
A. C. Curry, by J. C. Curry.
Farroll Brothers, by D. S. Beach.
Eugene F. Havey, by Eugene F. Havey.
Hulburd, Warren & Chandler, by Arthur J. Pollak.
Harry S. Klein, by Harry S. Klein.
Lamson Bros. & Co., by Geo. E. Booth.
McKenna & Strasser, by Christopher Strasser.
[fol. 731] Walter G. Moorhead, by Walter G. Moorhead.
Rogers Grain Co., by F. E. Glover.
James P. Ryan, by Jas. P. Ryan.
Scarritt & Hannah, by Chas. S. Scarritt.
Schifflin & Andrews, by Eugene J. Schifflin.
Gardiner B. Van Ness, Jr., by Gardiner B. Van Ness, Jr.
M. L. Vehon & Co., by M. L. Vehon.
George A. Wegener, by Geo. A. Wegener.
John West & Co., by Benj. H. Hill.
Winthrop, Mitchell & Co., by H. C. Schaack, Partner.
Daniel F. Rice & Co., by Daniel F. Rice."

By Mr. Brown:

Q. Mr. Brennan, this proceeding is entitled, "Grain Proportionals—Ex-Barge to Official Territory." Is barge grain received at Chicago known to the trade as grain which [fol. 732] comes into Chicago by barge via the Illinois waterway as distinguished from grain that is received at Chicago by lake vessels?

A. Yes.

Q. Are you familiar with the issue in this proceeding?

A. Yes. My understanding of the matter involved in this proceeding is whether grain that is shipped to Chicago in barges via the Illinois River should be entitled to have the benefit of the reshipping rates from Chicago to points in the East.

Q. What is your position in this proceeding?

A. I appear here to tell the Interstate Commerce Commission that I support the eastern railroads in cancelling

the application of the reshipping rates from Chicago to the East on grain which is brought into Chicago and South Chicago in barges via the Illinois waterway.

Q. Does some of the corn and other grains shipped to Chicago by rail originate at the same points as the grain which has been coming into Chicago by barge?

A. Yes. Principally corn, oats and soya beans, but the corn predominates in volume, as shown in the exhibit which has already been introduced here. It is only on corn that the rates to Chicago have been reduced by the railroads serving the territory adjacent to the Illinois waterway in an effort to meet the competition of the truck plus barge transportation to Chicago. The reduced corn rates to [fol. 733] Chicago have no transit privilege and, therefore, corn shipped to Chicago at these intrastate rates is not entitled, under the existing tariffs and the transit rules, to the lower reshipping rates from Chicago to the East. These reduced corn rates from northern Illinois to Chicago are known to the grain trade as lake-locals. That is, the billing is only good for reshipment by lake or by rail at local rates or for local consumption.

Q. What are your reasons for supporting the railroads in cancelling the reshipping rates to the East on ex-barge or ex-river grain?

A. There are several reasons and I will now give them. First: I am a grain commission merchant, or what is generally known as a receiver, and my business is to act as the selling agent on the Board of Trade floor for the shippers of grain from country points whose grain is shipped in cars to Chicago by rail. The grain which is consigned to me at Chicago by rail is in competition for sale with grain brought into Chicago by barge via the Illinois waterway for a very few elevators located on the Calumet River at South Chicago. Second: There has been published by a considerable number of railroads operating in Northern Illinois reduced rates to Chicago on corn from stations in Northern Illinois and these reduced rates are called "non-transit rates." Such rates have no transit privileges and the corn shipped to Chicago at such rates is not entitled to the reshipping rates from Chicago to eastern points. [fol. 733½] However, grain arriving at Chicago or South Chicago by barge now receives the benefit of the reshipping rail rates to the East. Because of this difference in treatment in the matter of rates from Chicago to the East the

corn shipped to Chicago by rail at the non-transit rates is discounted in price by the same buyers who receive corn in barges and by other buyers. Giving the barge grain the benefit of the reshipping rates to the East and not giving the corn which comes to Chicago by rail the benefit of the same reshipping rates to the East not only discriminates against the rail corn but results in a discount in price for the rail corn. Third: The corn shipped to Chicago by rail at the non-transit rates is not deliverable in Chicago in fulfillment of futures contracts because, under a regulation of the Chicago Board of Trade, grain delivered on a futures contract must be accompanied by live transit billing entitling the grain covered by that billing to the rail reshipping rates from Chicago to the East, but the barge grain, because it has the benefit under the existing rate tariffs, of the reshipping rates from Chicago to the East, may be and is delivered in fulfillment of futures contracts. Therefore, the barge grain is unduly preferred by reason of this advantage in the freight rate to the East and the rail corn is placed at an undue disadvantage in this respect.

Mr. Belnap: Right here, you mean by that rail corn that moves on the lake local non-transit rate, that is what you are talking about?

[fol. 734] A. On the interstate rate is not deliverable, on the high rate. Fourth: All grain, including soya beans, produced at the points in Illinois remote from the Illinois waterway, or nearby Illinois points from which the barge has not as yet drawn any grain, or Iowa, Minnesota, and so forth, is being displaced to some extent by grain moving to Chicago by barge. That shuts out from the Chicago market grain by rail from many points not adjacent to the Illinois waterway. This is detrimental not only to the Chicago market as a whole but to these other grain producers whose natural market is Chicago. In my opinion, the giving of the reshipping rates from Chicago to the East on barge grain has an adverse effect on all the grain producers in the territory naturally tributary to the Chicago market.

By Mr. Brown:

Q. It is your position that the corn that moves by rail to Chicago is at a marketing disadvantage as against the

corn coming into Chicago by barge, because of the fact that the corn which arrives at Chicago by rail hasn't the same value due entirely to the rate inequality to the East as between the rail and barge corn from the same producing area in Illinois?

A. That is my position and I say that the rate inequality to the East should be removed.

Mr. Brown: Mr. Examiner, I am now going to quote from what was said in some of the protests and I am taking the liberty of quoting them because Mr. Brennan has never seen those protests and does not know what was in them [fol. 735] but I will have to state what are in these protests before he can answer the question.

Mr. Macaulay: Mr. Examiner, are those protests before this hearing in this record?

Exam. Taylor: He is informing the witness of what are in the protests so that he can properly question him on the subject, as I understand it.

Mr. Brown: Yes, that is the point.

Q. One of the protestants, a shipper by barge from Morris, Illinois, said in his request for suspension, "that it has been the practice of this protestant to pass on to the farmer whose grain is sold to the protestant substantially all of the savings resulting from the use of the Illinois waterway." Another protestant, also a shipper by barge from Morris and Seneca, stated in his request for suspension: "That as a result of taking away the reshipping rates the grain sold by this protestant in Chicago, Illinois will be sold at a price less than that which would be paid for grain carrying reshipping rates; which will result in less money being received for each bushel of grain then shipped to Chicago, Illinois over the Illinois waterway by this protestant; that in the operation of its business this protestant has and will continue to pass on to the people from whom it purchases grain any advantage in price which it may be able to receive on grain shipped to Chicago, Illinois via the Illinois waterway, and in turn the farmers adjacent to the Illinois waterway in the vicinity of Morris and Seneca, Illinois have in the past received more per bushel [fol. 736] for their grain than they would otherwise have received had the grain not been shipped over the Illinois waterway, and also more per bushel than they can expect to receive if the above changes in the tariff are permitted

to become effective." The last mentioned protestant, who has been shipping grain to Chicago by barge, claims to have been able to pay higher prices to the farmers, and to have received greater profits for his company on the grain shipped by barge to Chicago solely because of the fact that the barge grain had the advantage of the reshipping rates from Chicago. Now, Mr. Brennan, are you complaining here because the farmer who raises this grain in Northern Illinois may receive a greater price for it when it is shipped to Chicago by barge than when it is shipped to Chicago by rail, if this greater price is due to the lower cost of transportation to Chicago by barge than by rail?

A. I do not begrudge the farmer a better price when his grain is shipped to Chicago by barge than by rail if that better price is based on the cheaper cost of transportation to Chicago by barge than by rail, but I do claim that the grain that arrives at Chicago by barge should have exactly the same treatment in the matter of rail rates out of Chicago as on grain that comes into Chicago on non-transit rail rates. However, if the so-called premium price for grain which is paid by these barge shippers from Morris and Seneca is due solely to the fact that the barge grain has the benefit of the reshipping rates, then I think that [fol. 737] the farmers are not entitled to this premium price and that these barge shippers are not entitled to a greater profit than the country elevator owner who ships his grain by rail is able to obtain, but if it is possible to pay the farmers more money for grain shipped by barge to Chicago because of the cheaper costs to Chicago by barge than by rail then I certainly do not begrudge them this premium price. The reason why I am advocating the cancellation of the reshipping rates on barge grain is because they give the barge grain an unfair advantage in the matter of the rates east of Chicago over the grain which is shipped to Chicago by rail on non-transit rates.

Q. Do you know whether the country elevator operators in Northern Illinois in 1938 and in the early part of 1939 requested the railroads serving them to publish reduced rates to Chicago on corn in order to meet the competition of the barges on the Illinois waterway?

A. Yes. The Illinois railroads serving the country elevators adjacent to the Illinois waterway received such requests and they published the reduced rates last April.

But they have no control over the rates east of Chicago. They have done the only thing that it seems they can do at the present time to meet the barge competition and that is to reduce their state rates to Chicago. These reduced rail rates on corn to Chicago have been made in such a way that the corn cannot get the benefit of the reshipping rate east of Chicago that the barge grain gets. Some of [fol. 738] these corn rates to Chicago from nearby Illinois points are lower than the lowest Illinois proportional of 8½ cents per 100 pounds to Chicago applicable on eastbound traffic and it seems to be the attitude of the railroads that to make the reduced state rates on corn a part of the through rate to the East would unnecessarily cause a reduction in a lot of rates from Indiana and Illinois to the East. The eastern railroads do not apply any different rates on corn than on other grains. I am not a rate man but I know that the corn that is received in Chicago on these non-transit rates is handicapped in price because the buyers on the Chicago Board of Trade floor will not pay as good a price as for corn billed to Chicago at the interstate rates because when the grain that comes into Chicago on an intrastate rate is shipped east the buyer has to pay to the railroad the difference between the intrastate and the interstate rate. Of course, the grain that comes into Chicago on non-transit rail rates can be reshipped from Chicago by lake vessels, but the trouble is that the elevator buyer who wishes to avoid paying the railroad the difference in the intrastate and interstate rates to Chicago can ship this non-transit grain via lake and, in some cases, it is the same buyer who is taking into his elevator the grain which comes to Chicago by barge. I have already said that the corn which comes into Chicago by rail on non-transmit rates is further handicapped because that grain is not deliverable on futures contracts. Incidentally, neither is trucked grain deliverable on futures [fol. 739] contracts and in this respect the barge grain now has an advantage over the trucked grain. I am the sales agent on the Chicago Board of Trade floor for the country elevator operators and through them I have an indirect connection with the producer who sells his grain to my country elevator patrons, but notwithstanding my self-interest I do not claim that any of these producers should be barred from the privilege of shipping their grain to Chicago by barge, but I most emphatically assert that

such barge grain should not have a lower rate from Chicago to the East than grain from the same locality or grain from some locality computing with it that is shipped to Chicago by rail or by truck. I consider it is grossly unfair to charge the shipper of grain by rail to Chicago a higher rate beyond Chicago than the shipper whose grain comes into Chicago by barge. What I have had to say goes to the only point that I can see in this matter and that is the preference that is given to the barge grain in the matter of the rail rates east and I, therefore, ask the Commission not only on my own behalf but on behalf of the board of directors of the Chicago Board of Trade and on behalf of a large number of other grain merchants, members of the Chicago Board of Trade, that the Commission permit the railroads to cancel out the reshipping rates from Chicago on barge grain and in that way remove the discrimination against the grain that comes to Chicago by rail. Considering all the circumstances it would seem best to remove the existing discrimination in favor of barge [fol. 740] grain by permitting the cancellation of the reshipping rates on barge grain.

Q. Now, Mr. Brennan, are there days when the Chicago grain buyers who receive grain by barge are not buying any grain on the exchange floor?

A. Yes, I have had that experience where they refuse to buy grain from me on the exchange floor and I then took the trouble to check up at the country and found out that they were buying down on the water; keeping that open and nursing the water trade against the Board of Trade.

Q. In other words, it is your information that these same buyers were filling their needs by barge grain and therefore would not bid for grain that was offered on the floor that came in by rail?

A. Well, they claimed it was congested on account of lack of room and it was charged up against us and not against the customers.

Mr. Brown: I think that is all from Mr. Brennan on direct.

The Witness: Mr. Examiner, might I cite a couple of instances that might enlighten you as to the mechanical features as to how it works?

Exam. Taylor: If your counsel has no objections.

Mr. Brown: I have no objection.

The Witness: I will just give you some of the details from the market end. You have asked a lot of questions [fol. 741] here and some of the men did not know it. I will just cite an instance or two here to show you how this discrimination works against the shipper and against the grain receiver of rail grain. On Friday last at about ten o'clock in the morning I had an order from an elevator located down near one of these water elevators giving me an order to sell 10,000 bushels of one yellow corn at 57½ cents. He wanted a certain price his track. In canvassing the market I was bid 57½ if I would give him the billing, if he could reship the corn, but I couldn't. I had to sell it on the lake local. The best I could get was 56¾. My order was open until noon. I called the shipper at noon and I said, "I am sorry but 6¾ is the best I can do." He said, "Cancel it, Jack. I am bid that here from the water." So he sold the 10,000 to a water house that is a competitor of his. Why did he sell it to him? Because the water house could give him reshipping. I was paying 5 cents to the railroad and I couldn't give him a reshipping rate so I lost the 10,000 bushels, the commission.

Q. When you say "6¾" I suppose you meant 56¾?

A. My order called for 56¾ and he got 57½ down there.

Mr. Enoch: Was that house located down on the water front?

The Witness: Yes and he could give by buyer reshipping rates after it was brought up here, as he said, in a package. I brought it up here on the railroad and I was stymied.

Mr. Belnap: Mr. Brennan, so that we know how much [fol. 742] you have been hurt, what was your commission?

The Witness: $75; I happen to be a member. That is three-quarter cent a bushel. I would like to say, if it is in order here, I have been in the business for 42 years, I have done nothing else but a grain receiving business and I do not propose to be put — of business through a discrimination. Now, a natural event, as I said in this statement here I have no complaint about the rate from Morris to Chicago. You can float up and down the stream as much as you want but when you hit land and you take advantage of that cheap rate you have also got to take the disadvantage of the cheap rate.

By Mr. Brown:

Q. When you say "hit land" you mean when they hit Chicago?

A. Yes. They can't come up here and holler at the Eastern railroads to throw them an anchor. Mr. Examiner, I want to tell you it is becoming intolerable. In 1933 we brought in 137,000 bushels of corn by barge to Chicago. In 1938, we had the whole figures for that year, 11,822,000. This year up to the 1st of November we have had 12 million something. You will have 15,000,000 this year with the water bed just starting. It is about to work. You have got an elevator at Clinton, one at LaSalle, one at Morris. You have moved your ninety year business of the Chicago Board of Trade down to the water and they want you to keep the Board of Trade open and keep that futures market. They are permitted to sell the futures, which [fol. 743] they do. I stated in here it affects not only me from Illinois but it also affects me from Iowa. Suppose overnight they buy 200,000 bushels of corn down the river? What is the procedure? They immediately hedge that, they immediately sell the future. What effect does that have but to lower the market, so when my Iowa corn comes in and it carries non-transit billing it has got to be sold in competition with the boat stuff. Now, I also want to say that in my 42 years,—and I am no traffic man although I have been on the committee several times,—my understanding was that a reshipping rate was a courtesy or something here that was extended to a connecting line, because I have been on the Board of Trade floor offering corn and oats for some time and a man stopped me and said, "What are they paying here, Jack?" "I will go and tell you," and I said, "8½." He said, "Why do you say that the shipping rate was based on an in rate and here you are with a barge that don't recognize the railroad at all, the same category as the truck." I don't know why anybody should discriminate and say that the barge can and the truck cannot. They are in the same category. But when the question is asked I say neither one of them is entitled to it. It is local start and scratch at Chicago.

Mr. Brown: You may cross examine.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Your business, I understand, is that of a commission merchant?

[fol. 744] A. Correct.

Q. Do you deal exclusively in grain which arrives via rail?

A. Yes.

Q. It is to your personal interest to increase the movement of grain arriving by rail?

A. Yes.

Q. And to lessen that which may come into market and be transported by water?

A. The grain that comes by water is not merchandized in the market, it does not come to the market as cash grain.

Q. Speaking officially as a merchant, that is your particular interest in these proceedings, is it not?

A. Yes.

Q. If this corn from down the Illinois River Valley did not come in here by barge do you think it would come in here by rail?

A. I don't think that, no, not entirely. You won't eliminate the water, don't get that into your head.

Q. Would it all have come into Chicago either by one movement or the other?

A. Yes, this corn that we are talking about.

Q. In your judgment it doesn't make any difference insofar as the volume handled is concerned, it will all be handled one way or another?

A. Yes.

Q. And all this corn will be dealt in on the futures market [fol. 745] regardless of whether it comes in by rail or water?

A. If it comes by barge it would not be dealt in,—it would not be delivered on futures contracts.

Mr. Brown: That is, if the reshipping rates are cancelled?

The Witness: Yes. I am assuming that, of course.

By Mr. Belnap:

Q. At the present time it can, however?

A. Yes.

Q. Well, wouldn't the corn be hedged in the Chicago market whether it could be delivered on a futures contract or not?

A. Oh, it might possibly but they wouldn't have the production where it was available.

Q. Isn't it possible that somebody might do it?

A. It is possible somebody might do it.

Q. You haven't dealt in that barge grain yourself so you can't tell about that.

A. No. It will be what we call out of position corn and they do hedge in that and very dangerous at times.

Q. Do they hedge the corn that moves in on lake locals?

A. Yes, in a way, in a fashion, like they would do with the barges.

Q. What do you mean "in a fashion"?

A. It is not as general as the other because it is dangerous. They cannot deliver that lake local. They turn about and hedge it. This may be bought at a discount of a cent a bushel.

Q. Is it your chief complaint that the Western lines restrict their lake local so that it is not applied on corn [fol. 746] handled through the country elevators?

A. No, my complaint is that the barge that has never paid a cent to the rail road is not entitled to that consideration.

Q. I was trying to get what your complaint was.

A. That is my complaint.

Q. You would have that same complaint whether the rail rates into Chicago carry transit privileges or not?

A. Yes, I would. I am against the reshipping rates on barges.

Q. So the lake local situation of having no transit is just window dressing as it were?

A. No, I beg your pardon, you can't put that in my mouth. I went with the Northern Illinois shippers twice before the Illinois Commerce Commission. We thought at the time with a reduction in the local rate we might be able to meet the water, which we did in one small way. I say right now if you take Morris at 5 cents, reduce it two cents and leave it in the same position as it is with the barge reshipping rate and it wouldn't be worth a penny!

Mr. Belnap: That is all I have.

Exam. Taylor: Mr. Macaulay?

By Mr. Macaulay:

Q. Would you identify this for me as being the rules and regulations and containing the charter of the Board of Trade?

A. Yes, I have——will I identify it for you?

Q. Yes.

[fol. 747] A. Well, that looks all right.

Mr. Day: I object to going into the rules and regulations of the Board of Trade.

Mr. Macaulay: I would like to have this marked for identification.

Exam. Taylor: Just exhibit it to counsel.

Mr. Day: I object.

Mr. Macaulay: I am not introducing it at this time but I would like to have it marked.

Exam. Taylor: How do you mean "marked"?

Mr. Macaulay: Well, I take it that I cannot introduce it with a person who is not my witness. I will be glad to introduce it if you will let me.

Mr. Enoch: We would like to get a copy of that if it is going to be an exhibit.

Exam. Taylor: Have you got enough copies to furnish?

Mr. Macaulay: Well, I got this from the Board of Trade. I don't know how many copies they might have available. This is not a private printing. It is the official rules and regulations.

Exam. Taylor: The rules of practice of the Commission provide that in introducing exhibits sufficient copies be furnished for the Commission and for counsel of record. Now, if you cannot comply with the rule, why, I don't know if I can receive it if it is objected to.

Mr. Macaulay: How many would it be necessary to have?

[fol. 748] Mr. Day: We have been distributing about 55 copies.

Exam. Taylor: Oh, 55, 60 copies.

Mr. Macaulay: Well, that would probably make it impossible for me to introduce it then because I doubt very much——

Exam. Taylor: Can't you bring out what you want by the answer?

Mr. Macaulay: Well, yes, I can at a later time, if I can have this marked for identification. Isn't that possible?

Mr. Brown: Before you rule, Mr. Examiner——

Exam. Taylor: We cannot mark it for identification because we have to put it in the record. We cannot admit that in the record because you haven't furnished copies for counsel.

Mr. Macaulay: I will make photostatic copies and be prepared tomorrow to take the steps I have referred to.

Mr. Brown: Before you go to that expense, what is the purpose?

Mr. Macaulay: I have a motion to exclude testimony that is put in here in the name of the Board of Trade. That is the purpose.

Mr. Day: Well, manifestly this is not proper cross-examination of this witness.

Mr. Brown: If you want to go to the trouble of getting all those copies out in order to do that I think you will probably have a good deal of trouble for the expense. It is all right with me, we will wait until the time he offers them.

[fol. 749] Exam. Taylor: Any other question on cross-examination, Mr. Macaulay?

Mr. Macaulay: Just one or two.

Q. Are you acquainted with Rule 602 of the Board of Trade, Mr. Brennan?

A. Just quote it and I will tell you. I can't remember them by number.

Q. "602: Judges must be disinterested—a member may not serve upon the Board, upon any committee, upon any trial or hearing where he has any financial interest in the result thereof or where he is connected with a firm or corporation having such an interest."

A. I am.

Q. Did you sit in on any board or any committee of the Board of Trade in determining whether or not the Board of Trade would be in these proceedings?

A. Did I sit on any Board?

Q. Yes.

A. Unquestionably I did.

Q. Did you vote in favor of the Board of Trade participating in these proceedings?

A. Yes, the whole Board of Trade were interested and not me alone, so we couldn't have had any meeting if we didn't put it up to them.

Q. Are there any other members of the board of directors who are similarly situated as you are as commission men, who voted on this matter of the participation?
[fol. 750] A. Yes, several of them.
Q. About how many?
A. Maybe four, five, six.
Q. How many are there altogether?
A. There are 15 directors.

Mr. Day: Just a moment, Mr. Brennan. I object to this line of questioning on the ground it is wholly immaterial and irrelevant. If some members of the Board of Trade have an objection, have a different view from the majority of the membership, they can come in here and make their position known to the Commission.

Mr. Brown: And they will. Mr. Belnap represents them.

Mr. Macaulay: I have no objection, of course, if they can show such an interest.

Mr. Day: I might say for the record the railroads are members of a lot of boards of trade and chambers of commerce but that never prevented these people from coming in and filing complaints.

Exam. Taylor: Objection sustained.

Mr. Macaulay: Exception.

Mr. Brown: Is there any rule or regulation of the Board of Trade that prevents any member from coming in and making any statement if his views are different from what the majority want to do?

The Witness: No, there is not.

Mr. Macaulay: That is all.

By Mr. Root:

Q. Mr. Brennan, are these other 21 people for whom [fol. 751] you speak in the same business as you are, that is, commission merchants on the Board of Trade?
A. Are they the same?
Q. Yes, are they all commission merchants?
A. Yes. I confined it in my campaign to just those that were actually interested in the receiving end. Now, if you will permit me I will give you another picture. At that time the buyers who buy off our members, I could see they would be handicapped in not getting any corn because this corn that comes in by barge is not offered on the floor, so I went to the Corn Products Company, one of the big-

gest buyers of corn, who are located at Argo. I said, "You are in this same position as we are. I would like to have you come to the directors and fight this thing." He said, "Jack, strange as it seems we have an engineer at Argo making a survey to see if we can get lower rates. If we can we want reshipping rates. If we can't we don't want it." So you are making that you are taking your cash grain market from the floor down to the river.

Mr. Brown: You might explain the location of Argo to the river.

Mr. Root: May I ask a question?

Mr. Brown: Sure.

By Mr. Root:

Q. Mr. Brennan, isn't it a fact that quite a little of this river grain is sold on the floor of the Board of Trade?

A. What is that question?

[fol. 752] Q. Isn't it a fact that quite a little of this river grain is sold on the floor of the Board of Trade?

A. No, I would say very little. There might be a little load here or a little load there, but very little.

Q. And, as a matter of fact, the Allied group, whom I represent, has sold considerable grain, a considerable amount of grain through Lowell Hoyt, you know that?

A. No.

Mr. Day: I object to counsel testifying in this record.

Exam. Taylor: Objection sustained.

Mr. Day: If he wants to take the stand let him do it.

Exam. Taylor: Objection sustained.

The Witness: I would like to answer that, too, if he will let me. I would like to give him a good answer for that. He just gave me a lead there, it is just nice. He said "Lowell Hoyt" and I understand Lowell Hoyt is financially interested in the Allied, so there is your combination again.

Mr. Root: And I object to that and your statement is a hundred per cent erroneous.

The Witness: Are you sure of that?

Mr. Root: Yes, positive.

The Witness: I don't think so. It is a ridiculous assertion.

Mr. Root: I don't think it is. I take exception to that.

The Witness: Just a minute. I would like to have you ask your Allen manager or your man at Mazon if Hoyt has [fol. 753] any money loaned to them in running their grain business? They know that.

Mr. Root: Well, ask him. Have him sworn right here.

The Witness: Well, Mr. Mazon isn't here.

Mr. Root: Mr. Allen is here.

The Witness: I will take his word for it, but that is the understanding in the trade.

Mr. Root: Well, I don't know what the understanding is. It is erroneous.

Q. Now, Mr. Brennan, isn't it a fact that if the reshipping privileges are removed from ex-barge grain that the price which can be paid for barge grain will be less?

A. Yes.

Q. And in turn will not the farmer in the country receive less money for his grain?

A. A particular set of farmers in a particular location.

Q. We are speaking now of those on the Illinois waterway.

A. That are using the waterway, yes, they will get less and they are entitled to less.

Q. Will anybody else get more?

A. Yes.

Q. Who?

A. Your market will probably be better for the general run of corn. My business will not be in competition with it.

Q. Now, isn't it true that the corn that is shipped to [fol. 754] Chicago by rail is sold in the Chicago market and also hedged in the futures the same as that which comes in by barge?

A. Not now under the present conditions, no. I would say that lake local is not hedged the same as the barges, not as freely at all, because there are certain restrictions. It is not deliverable.

Q. Pardon me, I didn't make myself clear, but grain is shipped in on transit billing on the I. P. rate?

A. Yes.

Mr. Root: That is all.

Mr. Childe: I would like to ask him if he understands that in the event that the reshipping rate is cancelled when it goes to the east on the ex-barge grain, will it make any

difference in the application of the lake local rates into Chicago from Illinois points.

A. Now, wait till I understand you on that. What we have got now, lake locals, will it change that?

Q. Yes.

A. No, I don't think so. They might make a change but as it is now, no.

Q. You do not assume in the answer that you just made to Mr. Root that you will get the privilege of using the reshipping rates on the grain that comes in by rail on lake locals?

A. No, No, but it will make your I. P., as the young man said, or the interstate billing corn more desirable. You [fol. 755] will probably get higher prices for that because that will be the only stuff deliverable in the pit.

Q. Is it your testimony, then, that instead of shipping grain into Chicago by rail on lake locals that it will be shipped in on the interstate or Illinois proportional rate?

A. You understand they are all shipped in on one billing. When you bill a car out you don't specify intrastate or I. P. or interstate. You just ship the car to Chicago. The commission man handles it to that basis and applies it on whatever billing is necessary.

Q. The inbound rates by rail would not be changed at all, would they?

A. No, he can't predict that. The railroads might change that in June.

Q. So far as your position here is concerned it does not assume that there will be any change in the inbound rail rate?

A. No.

Mr. Childe: That is all.

Redirecf examination.

By Mr. Brown:

Q. Mr. Brennan, when a car of grain comes into Chicago on this lake local rate the settlement with the railroad is on that local rate to Chicago?

A. Correct. They present an expense bill on the basis of the local rate.

Q. And any later adjustment in the charges——

A. Is paid or collected from the buyer of the grain.

[fol. 756] Q. —you think, then, is done with that bill after the buyer gets it?

A. Correct.

Q. Now, Mr. Brennan, a question was asked you whether if the reshipping rates are taken away from barge grain will it have any effect on the price? Now, in your opinion will it have any effect on the price adversely on barge grain that goes out by lake, as it does now?

A. No, I think it would be the same, the same as the lake local. It would put the barge the same as the lake local. They can go out by lake.

Q. And if 75 per cent of the barge grain is now going out by lake, on that 75 per cent there wouldn't be any change, —in your opinion there would be no reason for the buyers of barge grain making any difference in price if 75 or 80 per cent of the grain that comes in by barge is shipped by them out by lake?

A. No. That is right.

Q. Now, you spoke of efforts made, and you assisted in them, to get these Illinois railroads to restore this year rates that were somewhat similar to those that they had in 1937, so-called lake local rates on corn. Did you do the very best you could at that time in getting the rates reduced to where they are now?

A. Absolutely, we worked awfully hard on it. We thought we accomplished something.

Q. And the railroads, while they were willing to reduce [fol. 757] the rates on corn, they were not willing to make them interstate in their application?

A. Correct.

Mr. Childe: In that connection, did you ask the railroads to supply transit on those intrastate rates?

Mr. Brown: What the devil good would it do when the tariff says you can't do it?

Mr. Childe: I am asking the witness.

Mr. Brown: He doesn't know anything about it. He doesn't handle that.

Mr. Childe: I still would like to have the witness answer the question.

The Witness: Just a moment, I will answer it. That was left with our transportation department, of which Mr. Brown is chairman. We wanted an equalization and he will tell you whether he asked for it or not. I couldn't tell

you. I didn't go personally into that. We handled that through the transportation committee.

Mr. Brown: No, it is a matter of tariff, Mr. Childe, of long standing, that state rates do not have the benefit of transit until you hook them up with interstate rates or pay the through interstate rate from point of origin on through to destination. That is a cardinal principle in the transit tariffs at Chicago.

Mr. Childe: I won't cross examine Mr. Brown. Are you [fol. 758] going on the stand later?

Mr. Brown: Why should I?

Exam. Taylor: Mr. Macaulay, is this question brought up by something that was developed on redirect?

Mr. Macaulay: Yes, its application to this intrastate billing.

Recross examination.

By Mr. Macaulay:

Q. In connection with the billing out of Chicago on barge grain, if the reshipping rates are eliminated then there will be a lesser amount of transit billing available under Rule 1636 of the Board of Trade?

A. What is 1636, please? Just what is that?

Q. "Transit billing" is the title.

A. What does it mean What are you driving at?

Q. "For the purpose of this regulation"—it means that the elevator operators will furnish live transit billing to holders of warehouse receipts.

A. All right, I have got it, that is enough; I have got it. Now, what is your inquiry?

Q. I am asking you whether the all live transit billing will be substantially reduced,—whether the amount of live transit billing will be substantially reduced in the event reshipping rates are eliminated from barge grain?

A. No, we will substitute I. P. billing instead of barge billing, that is my contention.

[fol. 759] Q. That presumes that there will be an increase in the amount of I. P. billing.

A. Yes, the price will increase.

Q. Well, did you see that the reshipping rate will be 9½ cents from Morris instead of 5 cents?

A. Yes. The market will warrant that.

Q. When you went to the railroads to get this transit rate why was the tariff limited to June 30, 1940?

A. You understand that I only went with these country shippers who made the plea. They went to their own railroads. I never went before a railroad with them. I appeared with them before the Illinois Commerce Commission and they had an agreement between the railroads and the local people, that is why they made it June 30th.

Q. Do you understand that those rates are by their terms to terminate on June 30th?

Mr. Brown: Mr. Macaulay, you said "a transit rate." You didn't mean that, did you?

Mr. Macaulay: No.

Mr. Brown: I think you meant "non-transit".

Mr. Macaulay: Yes.

Exam. Taylor: Is that all? Is that all from this gentleman?

Mr. Cole: May I ask Mr. Macaulay whether he stands, or whether he still insists upon raising any objection as to the [fol. 760] competency of this witness after Mr. Macaulay himself on cross-examination has produced facts into the record from this witness, or whether he now withdraws it?

Mr. Macaulay: There has been no ruling in connection with my motion and for that reason I presumed that I was entitled to get the record as clear as possible pending the ruling.

Mr. Cole: Your presumption is erroneous, Mr. Macaulay.

Mr. Macaulay: I still maintain that the position of the Board of Trade as a Board of Trade is limited here and I renew my objection.

Exam. Taylor: Objection overruled.

Mr. Macaulay: Exception.

Exam. Taylor: Exception noted on the record. Is that all, Mr. Brown, from Mr. Brennan?

Mr. Brown: I believe so.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

Mr. Brown: There is another witness coming over from the Chicago Board of Trade this evening. He is not my

witness but he is not here, so others may go along. I just thought I would like to put him on when he comes.

W. V. WHEAT was sworn and testified as follows:

Direct examination.

Exam. Taylor: Give your name to the reporter.
[fol. 761] The Witness: My name is W. V. Wheat.

Q. What is your connection?
A. Traffic manager of the Peoria Board of Trade, Peoria, Illinois.
Q. Proceed, Mr. Wheat.
A. My name is W. V. Wheat. I reside in Peoria, Illinois. For the past eight years I have been traffic manager of the Peoria Board of Trade, with offices at 330 South Washington Street, Peoria, Illinois and prior to that time had about fifteen years experience in connection with commercial and railroad traffic matters. The testimony I am about to present is with the authority of the transportation committee of the Peoria Board of Trade and consideration should be given to the fact that two of the protestants in this proceeding, Continental Grain Co. and Norris Grain Co. of Chicago also are members of the Peoria Board of Trade and maintain offices in Peoria. The Peoria Board of Trade is a corporation organized under the laws of the State of Illinois, whose members are engaged in handling grain and grain products. The Peoria market comprises interests located in Peoria, Peoria Heights, East Peoria, South Bartonville and Pekin, all in an area extending about ten miles along the Illinois River. There are a number of storage elevators in these various communities with a capacity of between five and six million bushels, including one river front elevator at Peoria with a capacity of about [fol. 762] 130,000 bushels and two river elevators at Pekin with a capacity of about 400,000 bushels. All three elevators are also served by rail lines and are equipped to load barge and rail and to receive truck and rail grain and can easily be put into condition to unload barge grain. Owing to the fact that the movement of grain by barge to Peoria and Pekin has almost stopped during the past two or three years some of the unloading equipment would no doubt require repairs before unloading barge grain. I would like to make a short preliminary statement regarding our

contentions in connection with this proceeding. In April, 1935, the Farmers National Grain Corporation filed a complaint with the Commission attacking two adjustments as they applied to the application of proportional rates on ex-river grain, Docket No. 26965, hearing being held in Memphis, Tennessee during June, 1935. That complaint involved, first, proportional rates from Memphis, Tennessee to the southeast and Mississippi Valley and, second, from Peoria to Trunk Line and New England territories. It seemed to us the primary showing by the complainants was in connection with the rates from Memphis, Tennessee rather than from Peoria. It was stated at that time the change in the proportional rate application from Peoria was desired for the movement of wheat from Leavenworth, Kansas while our interest centered upon the effect of the rates from Illinois origins. At the time of the hearing in docket 26965, it was our understanding the proportional rate application in effect at Chicago would not permit the [fol. 763] use of those rates on ex-river grain, except where the inbound rates of the barge lines were on file with the Commission. However, it developed the rates were being applied contrary to our understanding. We would have been compelled to agree the Section 3 allegations in the complaint were proper so far as Peoria was concerned had we been convinced the proportional rates might be applied from Chicago where the inbound movement was under unfiled rates. Now it appears the eastern railroads have attempted to remove the cause of that complaint by restricting the proportional rates from Chicago whereby the rates from Chicago, Peoria and St. Louis are subject to the same general provisions on ex-river grain. For this reason we are compelled to intervene on behalf of the respondents. These two exhibits which I am about to introduce have been prepared by me and are correct to the best of my knowledge and belief. Exhibit number 20, which consists of two pages, is introduced to show the general method of equalizing the rates via Peoria, Chicago and Milwaukee from representative western points to representative points in Trunk Line and C. F. A. territory. We have used the proportional rates from Kansas City, Missouri, Omaha, Nebraska and Minneapolis, Minnesota because these rates represent the going rates on traffic which originates west of those points. So far as the Iowa origins are concerned, we have used what we consider representative origins, one

in southern, one in central and one in northern Iowa, and the whole purpose of this is to indicate that the inbound [fol. 764] rates in number of instances have no particular reference to the distance involved but, rather, are used for the purpose of equalization. We have the distances in or via the three different gateways indicating clearly that the primary purpose of the present system of not only proportional rates out but also proportional and local rates into Peoria, Chicago and Milwauke are for equalization purposes. I would like to give just one example. The distance from Chariton, Iowa to Peoria is 221 miles with a rate of 18 cents. The distance from Ames, Iowa, 274 miles, a rate of 18 cents. The difference in mileage is 53 miles and under ordinary conditions, if no consideration was given to equalization, there would be a difference of approximately two cents per hundred in the rates. Likewise, one more example: From Ames, Iowa to Milwaukee, Wisconsin the rate is 20 cents for a distance of 346 miles and from Clarion, Iowa a rate of 21 cents for a distance of 337 miles. Now, the reason for that is that those rates to Milwaukee and Chicago are equalized to the eastern territories and the proportional rates beyond Milwaukee, being the same as beyond Chicago to the Trunk Line and New England territory and the principal part of C. F. A. territory the inbound rates must be the same to afford this equalization. Exhibit number 21, one correction should be made on the title page. Under the index I indicate, "Receipts and shipments Chicago" and the word "Chicago" should be eliminated. Some testimony has been presented [fol. 765] and exhibits covering some of the information contained in this exhibit and I will endeavor to restrict what I have to say as much as possible. Page 1 is an outline map of the State of Illinois, which is divided by districts and counties. These districts are used by the various reporting bureaus of the Agricultural Department of the State of Illinois for the purpose of estimating production figures. The red line, that indicates the approximate location of the Illinois waterway. On pages 2 and 3 I have shown the production of corn for the period from 1929 to 1938, inclusive, and have shown separately, although they are included in the district totals, the production of corn in counties adjacent to the Illinois waterway, Morris, Illinois and south, where approximately fifty per cent or more of the territory is located within 35 miles

of the Illinois River. The 35 mile distance has been arbitrarily taken not because it represents the limit of the trucking territory to the river ports but because our investigation indicates that it does represent the territory most susceptible to truck movement to the ports. On page 5 we have shown some information that so far as I know has never been shown, and that is the estimated percentage of corn shipped out of the county where grown. We think that is a very important factor that is generally overlooked, because the production figures of the various states and counties mean little unless we can determine with some degree of accuracy how much of this corn is available for [fol. 766] for shipment via any method of transportation. We have shown below there the production figures which were previously shown on pages 2 and 3 and have applied these percentages for the years 1937 and 1938. We direct particular attention to the fact that so far as the bushels of corn shipped is concerned that the northeast and the central districts represent by far the greatest proportion of all corn actually shipped. On page 5-a we have shown the total production of corn, oats, wheat and soya beans for Illinois and United States 1929 to 1938 and also the indicated production for the year 1939. These figures indicate that approximately 14½ per cent of the United States production is within Illinois, approximately 12 per cent on the oats, 5 per cent on the wheat and 54 per cent on the soya beans. We have also shown the production for barley, rye and buckwheat for 1937 and 1938, indicating those grains are only of minor importance. On pages 6 and 7 we have shown the receipts of corn, oats, wheat and soya beans in the Chicago market for the year 1929 to 1938 and the same information for the year 1939 up to and including November 25, 1939. We just desire to direct attention to one particular movement there and that is the comparison of the amount of corn received by truck in the Chicago market for 1938 and up to and including November 25, 1939 by truck as compared to the total amount of all other grains received via the Illinois waterway. In 1938 there were 2,627,000 bushels of trucked [fol. 767] corn that arrived in Chicago and all the other grains which arrived by water totaled 1,547,000 bushels. In 1939 the total truck movement up to November 25th was 4,198,000 bushels and all other grains received via the barge line on the Illinois waterway 3,547,000 bushels.

Exam. Taylor: Before you leave that page, what does the "I.W.W." designate?

The Witness: Illinois Waterway.

Exam. Taylor: Illinois Waterway?

The Witness: Yes. The explanation is on page 7, Mr. Examiner.

Mr. Belnap: What page are you on? I am off a little bit.

The Witness: Pages 6 and 7, Mr. Belnap.

Exam. Taylor: All right, proceed.

The Witness: On pages 8 and 9 we have shown the grain handled by the Federal Barge Line for the years 1937 and 1938 between all ports which they serve, Davenport and south, on the Mississippi River. We have also shown the information as to corn which is included in the all grain totals. On page 9 we have brought those total figures so far as corn is concerned into bushels. It will be noted that so far as the Federal Barge Line is concerned the amount of grain they have handled to destinations on the Illinois River, in this case Chicago, is limited to the year 1937, in 1938 there having been no grain transported either from the Missis- [fol. 768] sippi River ports Davenport and south, or from Illinois River ports. The purpose of that is to indicate that the movement from the western part of Illinois and possibly the eastern part of Iowa is generally in a southerly direction. Now, we endeavored to ascertain with some degree of accuracy about the actual movement of grain via the private carriers on the Illinois River. The United States War Department admitted they had the information but they could not make it available, so we are unable to make any showing at all as to the actual number of bushels of grain which might have been handled from various river ports even to the south because my understanding is there was some movement by private lines to St. Louis and possibly to some other southern points.

Mr. Bradford: Mr. Wheat, you meant by "private carriers" those carriers other than the Federal Barge Line?

The Witness: Yes. I don't mean the Federal Barge Lines; a barge line carrier other than the Federal Barge Line. On page 11 I have set down the Federal Barge Line rates from ports on the Illinois and Mississippi rivers, Dubuque and south, to Peoria, Chicago and St. Louis, be-

cause those were the only rates available to us to which we could point with any authority, those rates being published by the Federal Barge Line in their all water tariff. Pages 12 and 13 we have shown the rates on grain and grain products from Kansas City to Peoria, Chicago and St. Louis. You will note we have shown the all water rates which are in the unfiled tariff and also the rates [fol. 769] which are in the filed tariff. I direct attention to one adjustment particularly and that is on page 13, the rate of 12.8 cents where deliveries are made to elevators in the Chicago River, including the north and south branch and the Calumet River. According to our understanding combination of rates over St. Louis, 4¼ cents to St. Louis and 6½ cents beyond, would properly be applied on any shipment for those deliveries. On page 14 we have shown just in a general way the adjustment of the non-transit rates from points adjacent to the Illinois River showing how close these adjustments are reaching into the Peoria territory. On pages 15 and 16 we have shown examples of these rates which have already been very well covered by other witnesses. Page 17 is an application of proportional rates carried under the general application of rates in Agent Jones' ICC 3055 in which the present proportional rates applications are carried. However, that same application has been carried over in ICC No. 3356. I have shown on the next pages, 18 to 23, the pertinent portions of the proportional rate applications applying from Chicago to Peoria and St. Louis and these have been more clearly shown possibly in Mr. Tannehill's exhibits numbers 2 and 3. However, I have shown here by underlining the important partes of these particular applications and I would like to direct attention to those and this applies only in connection with rates to Trunk Line and New England territories. Note 20 provides for the inbound rail or [fol. 770] water transportation line movement but provides that so far as the minimum rate provision is concerned that it will only apply when the through shipment is via rail. Note 50, which Mr. Tannehill did not show in his exhibit, applies at St. Louis, Missouri. We direct attention to the method in which that tariff now provides for the application of rates, proportional rates from St. Louis. In other words, the minimum rate application now in effect at St. Louis, as we read and understand the tariff, only

applies on traffic originating in the State of Mississippi and portions of Kentucky and Tennessee. I bring that out because I want to attempt to show what these varying applications are so far as the through charge is concerned. On page 20, note 25, and on page 21, note 40, the proportional rate applications merely provide for inbound rail or water transportation line and the protection of the local rate from the originating point as a minimum rate. However, when we consider note 25 applying at Peoria, which applies on grain originating in Illinois and the west bank points of the Mississippi River, we find an entirely different situation. The minimum rate provision in connection with this particular note in effect states that the minimum rate shall be the joint rate in effect via any route from the point of origin. I expect to show the effect of that particular provision in there. In other words, this note 35 does not require the protection of the local rate from Peoria as a minimum rate but, rather, the local rate [fol. 771] from the point of origin regardless of the route it moves. This note also carries a general exception which contains a full list of tariffs which I believe Mr. Tannehill has shown in his exhibit where the local rate to Peoria must be increased before applying the proportional rate out. I show that to indicate how much care is used to see that the rates from the points of origin to destination all rail are protected on an all rail shipment. On page 24 I have taken just one example indicating how the inbound proportional rates to Peoria are published and on page 25 I have taken specific origin points and using New York, New York as a destination I have shown the rate to Peoria and then the method of increasing that rate in order to protect the minimum rate provisions of note 35. Pages 26 to 39, inclusive, show a complete list of all of these stations in Illinois where it is necessary to increase the local rate by the various amounts shown in column "C" before the proportional rates may be applied from Peoria or Pekin, except so far as Pekin is concerned on page 30 it will be noted that there are a few stations where the rates differ or, rather, are lower to Pekin than they are to Peoria and the difference in the makeup in the inbound rate therefore varies from that which is shown on pages 26 to 29. We also have shown there a list of several stations on the Wabash Railway in western Illinois where the local rates

to Peoria are 12 cents but where under the minimum rate [fol. 772] provision of note 35 the outbound proportional rate must be increased by one cent in order to observe these minimum requirements, minimum rate requirements. We also have shown the West Mississippi—I beg your pardon. We have also shown the west bank Mississippi River Iowa points where it is necessary to increase the outbound proportional rate by one cent.

Exam. Taylor: All that is shown in the exhibit?

The Witness: Yes, it is shown.

Exam. Taylor: Can't you skip it?

The Witness: I will go over it very rapidly. On page 31 we have shown the rates which are on file with the Commission in tariffs filed by the Spring Lake Packet Company and the Illinois River Packet Company and have shown the same differences as by rail.

Exam. Taylor: Which Commission is that filed with?

The Witness: The Interstate Commerce Commission. I have shown the ICC numbers, Mr. Examiner. On page 32—this I do want to direct attention to, to the result of the minimum rate requirements applying at Peoria, Chicago and St. Louis and the first point I will refer to is Davenport. The rail rate from Davenport to New York, which has been used as a representative destination, is 40 cents. The inbound Federal Barge Line rate is 6½. In order to observe the minimum rate requirements of note 35 the proportional rate of 28 cents from Peoria to New York must be increased to 33½ cents while to Chicago and [fol. 773] St. Louis the published proportional rates from those points apply without any adjustment and I refer down again to Montezuma, Illinois, which is not located on any railroad and show the effect of these provisions so far as they apply to the three points mentioned. Under the minimum rate provisions of note 35 Peoria will secure the benefit of the outbound proportional rate of 28 cents on that particular business, giving them a through rate of 32¼ cents as compared with the local rate of 38 cents from Peoria to New York. In other words, via Peoria in that particular instance the combination rate may be applied without any padding of either the inbound or outbound rates and results in a lower charge than if applied via either Chicago or St. Louis.

Mr. Oliphant: Mr. Wheat, might I ask right there as to what the requirement is as to the amount of grain to be shipped in order to obtain that rate that you speak of?

A. You mean from Montezuma, Mr. Oliphant?

Q. The 32¼ cents that you referred to from Montezuma.

A. Mr. Oliphant, the inbound movement is subject to the minimum weights as shown on page 11 of my exhibit and from Montezuma the minimum weight to Peoria is 300 tons.

Mr. Oliphant: That is all.

The Witness: On page 33 I have taken the grain and grain product rates from Kansas City to New York, New York and it will be noted in the first block via Chicago that I [fol. 774] have used the 10¾ cent St. Louis combination to arrive at the lowest rate to elevators located in the Calumet district and in the north and south branches of the Illinois waterway in Chicago. The only other reference I want to make to that page is the reference to grain products, both rates prefixed by—both descriptions prefixed by the asterisk and by the number sign. In other words, the rates of 12 cents to Peoria, 14 to Chicago and 10 to St. Louis are obviously published in the Federal Barge Line I. C. C. No. 148 to reflect an equalization of rates from Kansas City to Trunk Line and New England territories, in the inbound proportional rates from Kansas City to Peoria, Chicago,—or, rather, because the inbound proportional rates from Kansas City to Peoria, Chicago and St. Louis vary to the same amount as the outbound rates. As I understand, a rate of 13¾ cents may be applied from Kansas City to Chicago where the shipper at Kansas City pays the loading charge of 55 cents a ton and using the proportional rate of 26½ cents beyond Chicago gives a through charge of 40¼ cents, so the rate which is on file with the Commission in Federal Barge Line I. C. C. No. 148 does not actually result in equalization via the three points. Starting on page 34 we have shown the proportional rate applications from Peoria, Chicago and St. Louis to C. F. A. territory and the only thing we desire to direct attention to there is that the minimum rate requirements differ somewhat from the requirements to Trunk Line and New England in that St. Louis [fol. 775] and Chicago must also protect their local rates as a minimum through rate. In that respect there is a difference between the two applications. On page 36, note 40, of Agent Jones' I. C. C. 3300, the provision is carried

that the northwest proportional rates apply on grain which arrives at Chicago by boat lines. On page 39 we have simply set down the local rates from Chicago, Peoria and St. Louis on grain and grain products and on page 41 we have shown the minimum inbound rates which would be required into Chicago on Illinois River grain if it was to move out of Chicago on the note 40 proportional rates. The difference here is that so far as Peoria is concerned there is a grave question as to whether or not Peoria has any proportional rates on grain arriving at that point by barge line and moving to C. F. A. territory. On page 43 we have shown a comparison of the rates from Kansas City and Havana, Illinois to three representative points in C. F. A. territory and my exhibit differs slightly from Mr. Tannehill's exhibit number 9 in that I indicate as an example that at Buffalo, New York the proportional rate must be increased to protect the local rate from Chicago to Buffalo. In Mr. Tannehill's exhibit, in which he used Morris, LaSalle and I believe a number of other origins on the Illinois waterway, he did not show any requirement that the outbound proportional rate must necessarily be increased to observe the provisions of the minimum rate application as shown in note 40. That is all I have, Mr. Examiner.

[fol. 776] Exam. Taylor: Do you want to introduce these?

The Witness: I offer in evidence, Mr. Examiner, exhibits numbers 20 and 21.

—Exam. Taylor: They will be received.

(Exhibits 20 and 21, Witness Wheat, received in evidence.)

Exam. Taylor: We will reserve cross examination of Mr. Wheat until this evening. Off the record.

(Discussion outside the record.)

Exam. Taylor: All right, gentlemen. We will adjourn now, at 5:14, until 7 o'clock tonight.

(At 5:14 o'clock p. m., a recess was taken until 7:00 o'clock p. m.)

[fol. 777] Evening Session

The hearing was resumed pursuant to recess.

7:00 P. M.

Exam. Taylor: All right, gentlemen, let us come to order. Take the stand, Mr. Wheat.

W. V. WHEAT resumed the stand and testified further as follows:

Exam. Taylor: Now, is there any question by counsel for respondents? Any question by counsel for parties in favor of the proposed schedules?

Mr. Bradford: I haven't any.

Exam. Taylor: Cross examine.

Mr. Oliphant: I have just a few questions, Mr. Examiner.

Cross-examination.

By Mr. Oliphant:

Q. Mr. Wheat, on your exhibit number 20, for what reason did you not show any Illinois points?

A. Well, as a general proposition, Mr. Oliphant, the situation in Illinois is entirely different than the situation here in that from Illinois to Trunk Line territory and the western termini we have joint rates, which does not hold true on the origins I have used in the exhibit. The exhibit simply sets down cases of where the rates are equalized on combinations where there are no joint rates from point of origin to final destination. Now, to C. F. A. territory it was [fol. 778] impossible to make such a showing due to the fact that some lines have joint rates to C. F. A. territory and others do not. There is no absolute equalization to all of C. F. A. territory from Illinois.

Q. In other words, you could not show an equalization from the Illinois,—from all of the Illinois territory like you portrayed from this other territory, is that correct?

A. That is correct; as I say, due to the fact there are so many joint rates, particularly to Trunk Line and western termini.

Q. Now, on your exhibit 21, on pages 8 and 9, what was the purpose of showing the tonnages involved to river crossings south of St. Louis?

A. The purpose of that was to show that the movement from the Mississippi River ports,—as far as the Federal Barge Line itself was concerned; I believe I made the statement that it was impossible to get the movement of grain via other barge lines,—to show at least so far as the Federal Barge Line was concerned where they handled the grain from and where they handled it to. It was the only record that it was possible to get.

Q. In other words, Mr. Wheat, what I am trying to determine is whether the tonnages shown to New Madrid, Memphis, Vicksburg, New Orleans, Greenville and Kansas City would be involved in any way in this proceeding?

A. Not at all, Mr. Oliphant. I wanted to indicate the direction of the move and why the movement from Iowa [fol. 779] via the river was not so important as it was from Illinois.

Q. On page 10 you illustrate a drawing and show a number of elevators located on the river bank and with particular reference to the upper Mississippi River show elevators under construction. Are any of the rates from these upper Mississippi River crossings involved in this proceeding?

A. I understand the proportional rate application applies to the grain originating at the upper Mississippi River crossings as well as Illinois origins.

Q. But these proportional rates against which the restriction runs apply from the river crossings St. Louis, Peoria and Chicago, do they not?

A. On grain originating at these particular points.

Q. They would have no application from these upper Mississippi River points as proportional rates?

A. Not at all. The purpose of this is to indicate where the grain will originate on the Mississippi and Illinois rivers.

Q. On page 11 of your exhibit you show some Federal Barge Line rates. Do these rates represent all of the charges that the shipper would be required to pay when he uses these rates?

A. Mr. Oliphant, all I attempted to do, as I stated I believe, was to set down the only rates which we were able to find in any publication of any barge line. I made no attempt at all to treat the handling of the grain after it reached the port or before it reached the port. In fact, [fol. 780] the records, as I have indicated, show that so far

as the movement to Peoria, and Chicago is concerned that the Federal Barge Line has handled very little grain and that was during 1937 to Chicago; that during 1938 they never handled any grain under these rates so far as the records would show.

Q. Mr. Wheat, I am particularly concerned as to the statement of the rates on this page.

A. Yes, sir.

Q. I want to know whether those rates represent what the shipper would have to pay, whether those rates include the elevation into the barge and the discharge from the barge?

A. Mr. Oliphant, I never testified as to the physical handling of grain. I only set down rates which are shown in your tariff.

Q. Well, how do those rates apply?

A. They apply to any,—they apply to in barge at origin and on barge at destination, the same as carload rates apply only in car at origin and on car at destination.

Q. I believe you stated you checked these rates out of the Federal Barge Line tariff. In fact, it shows on the exhibit?

A. Yes, sir.

Q. Is there not a provision in that tariff for the provision of handling charges?

A. Oh, if the Federal Barge Line handles the shipment, yes; that is, if they load or unload.

[fol. 781] Q. From your knowledge of their performance, I believe you stated at Peoria that the elevator was not equipped but could be equipped to handle grain from barge?

A. My understanding was that the elevator would require additional repairs to unload from barge.

Q. So in that event the handling charge would be assessed by the Federal Barge Line because that would be the only method of transferring the grain, would it not?

A. The situation on the Illinois River has changed so radically within the last few years that there has been no necessity for keeping the unloading equipment in repair. Undoubtedly if the situation was such that we could handle barge grain through Peoria those repairs would be made immediately and it wouldn't be any question of the Federal Barge Line unloading the grain because it would not be handled that way.

Q. Now, where they do not perform this unloading who pays the charge for loading that traffic into the barge and discharging it from the barge?

A. The shipper pays, ordinarily, the charges for loading into the barge and the receiver the charges for unloading from the barge, the same as he pays for loading into cars and unloading from cars.

Q. But suppose you have a car of grain originating beyond Kansas City and coming into the Federal Barge Line's docks at Kansas City to be transported by barge [fol. 782] into Peoria, that grain would already have had an elevation at the interior country point, would it not?

A. I assume if it was handled through an interior country elevator, yes.

Q. So that you would have a handling charge in addition to that at the interior point, at Kansas City, to get it into the barge?

A. Mr. Oliphant, you are going again into the physical handling of this grain at Kansas City and if you know anything about the physical handling of grain at Kansas City you know that practically a hundred per cent of the grain that goes to Kansas City is unloaded into elevators.

Q. That still has to be put into the barge, Mr. Wheat, at Kansas City, regardless of whether it comes through an elevator or some hopper arrangement?

A. That is correct and the same thing happens if it comes in by car and is transferred to the elevator. Somebody must pay the charge.

Q. That car of freight at the interior point would not come through Kansas City and go through another elevator to get to Peoria?

A. I assume, Mr. Oliphant, that what you are attempting to develop is this, that on a car of grain moving from some interior elevator west of Kansas City direct to Peoria, where the merchant at Kansas City has no control over the grain, if that is your question I assume that [fol. 783] under those conditions there would be a loading charge at Kansas City to get the shipment in the barge.

Q. At any rate, the rates shown on page 11 of your exhibit do not cover incidental charges necessary to put the freight into the barge or discharge it from the barge?

A. Mr. Oliphant, I again state that all I have shown or done was set down the rates. I made no attempt to cover the physical handling of the tra-n, the transfor from the

barge to the elevator or to the car, or the loading. I say this, that if the Federal Barge Line is compelled to load the grain there is a loading charge which they assess. If they are compelled to unload the grain there is an unloading charge which they also assess, in addition to these rates.

Q. Have you received a copy of the new tariff of the Barge Lines scheduled to become effective on December 22nd?

A. I received that Monday.

Q. 12-B?

A. Yes, sir.

Q. On page 11 of your exhibit the rates from St. Louis to Peoria as well as from Montezuma, Havana, Lacon, Peru and Morris have been eliminated from that tariff, have they not?

A. I didn't have an opportunity to check it, Mr. Oliphant, because it came in too late.

Q. Will you turn to page 12 of your exhibit and tell me whether the 6½ cent rate from Peoria shown on there [fol. 784] to—rather, strike that,—from Kansas City to Peoria includes the loading into and transferring from the barge?

A. Mr. Oliphant, the explanation under the conditions says, "In barge at origin and at destination."

Q. In other words, it does not?

A. It does not.

Q. On page 32 of your exhibit you show a through rate by rail of 38 cents from Lacon, Illinois to New York?

A. Rail rate, yes, sir.

Q. There is also a reference mark indicating that the published proportional rail rate is 28 cents from Peoria to New York, is that correct?

A. Are you talking about the asterisk reference?

Q. Yes, that 28 cent rate which you refer to from Peoria to New York, is it not?

A. That is the published rate and the rate shown is the increased rate to observe the minimum rate rule.

Q. Now, what is your local interstate rate, or your local interstate rate from Lacon, Illinois to Peoria, Illinois?

A. Mr. Oliphant, I will have to tell you that from memory. As I remember it is 10 cents by rail.

Q. 10 cents. On a rail movement, then, that would make the balance the proportional rate, wouldn't it?

A. That is correct.

Q. Do I understand from that, then, that on grain which [fol. 785] the rail carriers receive from the water line at Peoria going to New York, originating at Lacon, that they collect an amount of 5¾ cents over and above that on traffic or grain received by them at Peoria from a rail carrier?

A. That is what they would do if there could be any movement.

Q. Well, I am assuming from the rates shown on your exhibit that there would be a movement.

A. Well, it is very obvious under the example that I have shown that the rate even under low rates of 6½ cents to Chicago, which the records indicate we do not handle anyway, that there the rate would be 32½ cents and it seems very obvious to me that there could be no movement through Peoria when the rate had to be 38 through.

Q. The fact remains, however, that this exhibit indicates that the shipper of barge grain pays 5¾ cents more to the outbound rail carrier than the shipper by rail does?

A. If he could handle the grain under the rates. In other words, this simply shows why he could not handle it.

Q. In other words, you believe that 5¾ cents is a disadvantage?

A. It is a decided disadvantage. You couldn't handle it.

Q. Well, now, under that set-up the eastern rail carriers would have quite an advantage in handling barge traffic as against rail traffic?

A. If they could handle it from Peoria, yes.

Mr. Oliphant: That is all.

[fol. 786] Exam. Taylor: Any other cross-examination?

Mr. Childe: I have a few questions.

Exam. Taylor: All right, go ahead.

By Mr. Childe:

Q. I don't find anywhere in your exhibits that you show receipts of grain at Peoria. Are there any such figures in your testimony?

A. Mr. Childe, I will gladly answer the question. I attempted to ascertain from the river elevators if they would be willing to furnish me with the records of all grain received by barge and all grain forwarded by barge, to be consolidated so that there would be no opportunity to

divulge the information as to the individual shipper or receiver and they declined to give me the information, so it is impossible for me to make any showing as to the receipts of grain by barge or the forwarding of grain by barge. Therefore, there would be no reason that I can see to show the receipts and shipments by rail.

Q. I understand from your answer, then, that the Peoria Board of Trade does not keep the statistics showing the water movement into or out of Peoria?

A. We have no—on all other grain, you understand—on all barge grain, you understand, it is not subject to our jurisdiction. All barge grain is not inspected and that is where our records must come from, from the inspection department. As I say, they declined to give us the information.

Q. You do not have the figures?

[fol. 787] A. I do not have them, no, sir.

Q. Do your rail figures cover both Pekin and Peoria?

A. Absolutely.

Q. You consider that one market?

A. Everything in the market—I think I recited on my direct the different localities which we consider in the Peoria market.

Q. How many elevators at Peoria and Pekin receive grain by water?

A. For the past several years, Mr. Childe, there hasn't been any received by water so far as I could find out.

Q. Are any of them equipped to receive grain by water?

A. I also made the statement on direct, Mr. Childe, that undoubtedly there would have to be some repairs made because they had not been used for some time for unloading purposes but they can be equipped very easily. In fact, the equipment is there but undoubtedly needs repairs.

Q. Are these river elevators, then, which are located at Peoria and Pekin used only for shipping?

A. So far as I can find out the only barge grain which has been handled by those elevators in the last two years at least has been forwarded by barge and not received.

Q. I take it, then, that you do not have any private barge carriers operating on the Illinois River transporting grain to Peoria and Pekin at the present time?

A. I presume, Mr. Childe, you are referring to the Illinois [fol. 788] River Packet Company and Spring Lake Packet Company?

Q. Or any others.

A. Those are the only two that I would know anything about. So far as I could find those packet lines had not handled any grain for at least two years. I endeavored to locate some handling.

Mr. Enoch: You mean to Peoria?

The Witness: To Peoria or Pekin.

Q. You are not speaking about the movement outbound?

A. I am talking about the inbound movement.

By Mr. Childe:

Q. Why is it that the Peoria elevators are unable to attract any grain by water?

A. Mr. Childe, I attempted to show that by my exhibit, that the penalty against movement through Peoria by barge-rail is too great for anybody to overcome.

Q. Is that penalty in the outline rail rates?

A. Under certain conditions it is in the outbound rail rates, yes, sir.

Q. Well, now, looking at page 11 of exhibit 21 I do not find any penalty against Peoria there, Mr. Wheat.

A. On the inbound rate?

Q. On the inbound rate.

A. That is correct.

Q. Those rates are shown at least two cents below Chicago from the origins shown there, are they not?

[fol. 789] A. Yes, they are two cents based, of course, upon the highest Federal Barge Line rate and the highest minimum rate.

Q. And your reshipping rail rates out, disregarding for the moment any penalties, are generally two cents higher than Chicago to the east, are they not?

A. If we do not consider the minimum rate provision in the applications.

Q. Yes.

A. Now, we are talking about from these particular Illinois points shown on page 11 of the Federal Barge Line.

Q. Well, taking Dubuque, Iowa, for example, I note that you show there a rate by water of 7½ cents to Peoria, 12.8 cents to Chicago, a difference in favor of Peoria of some 5.3 cents per hundred pounds. Now, tell me about your outbound rate in case you would get a shipment from Dubuque

by water: Would the railroads charge a penalty rate from Peoria to offset that inbound advantage?

A. If you look at the first comparison on page 32, Mr. Childe, I think it will probably give you the answer.

Q. Possibly it does but I would like to have it explained on the record so I will be sure to get it.

A. Well, the 7½ cent rate into Peoria must be paid, of course, by the Peoria receiver. Then assuming that the outbound grain or the products are forwarded to a point in Trunk Line or New England territory, of which we have [fol. 790] used New York as representative, the published proportional rate, again protecting the minimum rate provision, to New York from Peoria on grain originating at Dubuque, Iowa is 28 cents, but the all rail rate from Dubuque, Iowa to New York is 41 cents and under the provisions of note 35, Agent Jones' ICC 3055, we can use no rate via Peoria which is less than the direct rail rate from Dubuque, which requires us to increase the 28 cent published proportional rate to 33½ cents, the 7½ in and the 33½ out making the 41 cent through.

Q. And that note, as I understand you, applies even if grain comes into Peoria by water?

A. If it comes in by water or by rail.

Q. Well, now, suppose that you were able to get the reshipping rates from Peoria to the east applied on the basis of two cents over Chicago on the grain that would come into Peoria by water, would that remove your objection to the present rate adjustment?

A. We would have to consider the whole adjustment, Mr. Childe, and asking me a question about one specific adjustment would not permit me to give you an answer at all.

Q. Well, I am using a specific illustration just to make myself clear. I am trying to find out, Mr. Wheat, if the rate by water into Peoria plus the rail rate out gave you just as good a total rate as the rate by water into Chicago plus the rail rate out of there to the eastern destinations, [fol. 791] would you then be satisfied?

A. I wouldn't say we would be satisfied, Mr. Childe, but I doubt if we would complain if it could be shown that the barge and rail rates via Peoria would be equalized with the barge and rail rates via Chicago. Whatever method was used to do that, of course, would have to be given some consideration.

Q. What I am trying to get at is your real objection here is a lack of equalization, or do you have some other objection to the water rates?

A. So far as I am concerned, Mr. Childe, the only objection I am making is that Peoria is penalized at the present time. Probably "penalized" is not the proper word because we just imply cannot handle any of the business and to that extent we are penalized.

Q. You are at a disadvantage and that is what you are complaining about?

A. That is our principal complaint here. Now, as to the way the railroads desire to remove that, that is something else.

Q. Do you have any inherent objection, as far as the Peoria Board and its members are concerned, to the receipt of grain by water if you could handle it without penalty?

A. Oh, if we could handle it without penalty I doubt if we would have any great objection to it.

Q. Well, do you have any?

Mr. Enoch: I would like to know what he means by han-
[fol. 792] dling grain on a penalty? Do you mean applying the proportional rate rather than the local?

Mr. Childe: I think the witness understands it.

Mr. Enoch: I think I am entitled to understand it.

Mr. Childe: If you don't understand it I suggest you take the witness stand after we are through. I object to being interrupted, Mr. Examiner.

Mr. Enoch: I want to know if the witness understands it and I ask that as a matter of courtesy that counsel explains what he means by that.

Exam. Taylor: Well, let's see if the witness does understand. Do you understand it?

The Witness: My understanding is this, that Mr. Child wants to know if we have any objection to handling inbound barge grain provided there was no penalty against Peoria? If that is Mr. Childe's question I can answer it.

Exam. Taylor: Was that your question?

Mr. Childe: I think it was. I was diverted for a moment and I am sure Mr. Wheat understands me. I will say "Yes", because I know he understands what I am talking about.

The Witness: I said I believed, Mr. Child, that we would not be here objecting if grain could be handled into Peoria

by barge and out by rail under the same basis as through Chicago, but as to how the railroads desired to effect that, that was something else.

[fol. 793] Q. You would not object if you had an advantage over Chicago, would you?

A. Well, I should say not.

Q. Now, you understand that the railroads are proposing in this case to apply on the ex-barge grain both from Peoria and from Chicago to the east the local rates. Of course you understand that, do you not?

A. I think I do, yes, sir.

Q. Now, the local rates from Peoria to the east are for the most part more than two cents above the local Chicago rates to the east, are they not?

A. Oh, yes.

Q. So so far as the locals themselves are concerned you would be at a greater disadvantage in shipping to the east compared with Chicago than you are now on a two cent difference in the reshipping rates?

A. Mr. Childe, are you assuming that we are going to handle some barge grain in and then we are only going to pay two cents more out than Chicago, or are you assuming that we are going to bring in rail grain and then pay two cents more out than Chicago? I don't quite understand the question.

Q. Yes, I am assuming that.

A. Which?

Q. Well, there is a——

Mr. Enoch: There is an unanswered question here.

Exam. Taylor: He asked you, "Which"?

[fol. 794] By Mr. Childe:

Q. I am assuming that the difference in the reshipping rates will be two cents whereas the difference in the local rates is more than two cents.

A. Mr. Childe, I wanted to know if your question is predicated on the fact that we are talking about barge grain moving out of Chicago and Peoria or if we are talking about rail grain moving out of Peoria and Chicago?

Q. We are talking about barge grain.

A. Well, we have an objection under the present adjustment if we had to pay two cents more out than Chicago

unless in all cases our barges, our barge rates in went two cents less than Chicago.

Q. At least two cents less?

A. That is right. We would not care if they were more.

Q. Well, your barge rates are at least two cents under Chicago now, aren't they?

A. The published rates are that; that is "published rates" is probably not the proper term, but the only rates which we could find are that but they move no grain to Chicago, as the records show.

Q. Well, assuming that you had those barge rates on the basis of two cents under Chicago inbound and you had the local rates outbound by rail ranging from 3 to 6 or 7 cents a hundred pounds higher than Chicago, do you feel you would be able to compete with Chicago under that adjustment?

A. Moving out under local rates?

[fol. 795] Q. Yes.

A. Well, the difference in the rates to western terminii and points east is 3½ cents.

Q. That is correct.

A. And we would never be able to do any business against Chicago unless we could buy our grain at 3½ cents a hundred pounds less than Chicago could. If we could do that then, of course, we could do business against Chicago.

Q. And looking at page 39 of your exhibit 21 I find some points there in C. F. A. territory where the local rates from Peoria is as much as seven cents a hundred pounds higher than from Chicago. Take the first point on the sheet, Lacrosse, Indiana: The local rate from Chicago 13 cents, local rate from Peoria 20 cents.

A. That is correct.

Q. You couldn't do any business, could you, at that disadvantage in outbound freight rates?

A. That is true.

Q. Wouldn't the effect, then, of the approval by the Commission of the railroads' proposal be that Peoria would not ship any grain at all by rail to the east that came in by barge?

A. We don't ship any now and we couldn't then, I assume.

Q. You couldn't do it under the proposal, could you?

A. No, sir.

Q. Well, then, what would be the effect of this proposal of the railroads if it is approved by the Commission so far [fol. 796] as Peoria is concerned? How would you benefit?

A. We would at least be put on an equality so far as shipping to the east is concerned on grain which was being diverted to the Illinois waterway and being moved into Chicago and thence out all rail.

Q. How would you be equalized? You mean by the fact that the grain would then move by rail instead of barge?

A. I wouldn't say, Mr. Childe, that the grain would move by rail, no.

Q. Well, if it didn't move by rail how would Peoria benefit by this proposal?

A. We would be at least in a more nearly competitive position so far as rates are concerned.

Q. Well, you just showed, Mr. Wheat, that you would be in a worse position because your outbound local rates are as much as seven cents a hundred pounds higher than Chicago and you said you could not use them. Now, how would you be in any better position?

A. Mr. Childe, as far as I know, and I have looked over the records of a good many firms handling grain, we have never moved any grain to Lacrosse or Buffalo or New York or any other point in this territory on local rates from Peoria and I question very much if we ever could.

Q. As a matter of fact, you know that is true of Chicago, too; they don't ship out on local rates?

[fol. 797] A. I wouldn't want to testify that is true but I presume it is. It is logical.

Q. Now, just how would Peoria be benefited if this rate proposal now before the Commission goes in?

A. We would be benefited to this extent, that Mr. Tannehill indicated the amount of barge grain received in Chicago from May 1st to November 30, 1939 and he showed the position and if my computation is correct approximately 16 per cent of the inbound barge grain went out by rail. To the extent that the receiver in Chicago was able to put that grain in his elevator and ship it to any eastern point lower than we would be able to handle grain and deliver it at the eastern points we would be out of the picture so far as shipping to that destination would be concerned.

Q. As I understand your answer the benefit you expect to get would be in the fact that some of this grain, at least, which now moves by water, would be diverted to the rail-

roads and on the all rail movement you would be in a better position to compete, is that correct?

A. Mr. Childe, I am not so hopeful that a great amount of this grain is going to be diverted from the water to the rail myself at all.

Q. Well, you were trying to tell me how you would be benefited and that was what I got out of your answer. I am just trying to see whether I understand you correctly.

A. My answer was to the effect that if the receiver of [fol. 798] barge grain, or the receivers of barge grain who forwarded 16 per cent of their barge arrivals could get that grain into Chicago and put it through their elevator cheaper than they could rail grain that we would be more nearly on an equality with it because we then also would have an opportunity to do business on an all rail adjustment, which the Chicago man would be compelled to do. Now, you asked me why the difference between that answer and why I think there will be no great diversion of grain from the barge line to the rails. Because I think the records clearly show that the lake will take out all the barge grain that has been brought in here for any number of years and probably will continue to take out that much for a number of other years. Therefore, all you do is keep from giving this barge arrived grain in Chicago what, it seems to me, to be an artificial advantage. It will go out by lake. I don't think that there will be any great lessening of the movement by barge and that is my honest opinion.

Q. And if it does move by barge to Chicago and out by lake Peoria would not get any benefit out of this adjustment, would it?

A. We will get the benefit of the adjustment to the extent that beyond 16 per cent,—that if the man owns the grain in his elevator at a lower price than he gets rail grain and he has to do business on an all rail basis, that we will be in a position to compete on the same relative basis that he is compelled to use.

[fol. 799] Mr. Childe: That is all, thank you.

Exam. Taylor: Any further cross examination of this witness?

Mr. Brown: I have one question.

Q. Mr. Wheat, I understand one of your answers was predicated on the supposition or the fact that the barge rates or costs to Peoria and Chicago would be the same

and in that event you would want a reshipping rail rate from Peoria as low as from Chicago to the east?

A. I presume that would be a natural assumption, Mr. Brown, if the barge rates were the same into Peoria as they are to Chicago, that we would have to have the same proportional rate east, that is correct.

Q. Well, if a man at Peoria put his barge billing against rail grain wouldn't he break down the equalizations between Chicago and Peoria to the east to the extent of at least two cents per hundred pounds?

A. Mr. Brown, as I see it, if I understand your question correctly, the proportional rate to apply in connection with those particular rates would have to be published and restricted to the inbound barge movement in order to bring about that effect.

Q. But would there be anything to prevent a man who had both barge billing, or barge grain and rail grain from putting his barge billing behind the rail grain and get a [fol. 800] rate from Peoria to the East the same as from Chicago, or two cents per 100 pounds less from Peoria than the rail rate?

A. That is absolutely correct, Mr. Brown, the same as now you can put barge billing behind grain that moves in under what some of them are pleased to call lake rates.

Q. But the rate east of Chicago today is the same on both; you want to get the barge grain at Peoria and then put it out at two cents per hundred pounds less than any rail grain you can put out?

A. I didn't say we wanted to, Mr. Brown. I said that was what we required if we are to be equalized.

Q. You are asking for equalization here, aren't you?

A. No, I am not asking here for equalization at all. I am not here asking for anything.

Mr. Brown: That is all.

Mr. Bradford: I have a question.

Q. Mr. Wheat, Mr. Oliphant questioned you about some grain moving from Kansas. Do you receive any appreciable amount of grain direct from Kansas country points to Peoria?

A. As far as I know, Mr. Bradford, from my years of experience in the Peoria market we have received no grain direct from any Kansas point.

Q. Do you receive some grain from terminal grain elevator operators in Kansas City by rail?

A. From time to time, yes.

Q. And under what rate does that move?

[fol. 801] A. It moves under proportional rate from Kansas City.

Q. Now, if the grain coming from Kansas City under proportional rate arrived at Kansas City from country points by car, who pays the expense of moving that grain from the car into the elevator and from the elevator back in the car?

A. Well, the receiver and the shipper pays the expense.

Q. That is the same as would occur in connection with the barge line movement from Kansas City, isn't it?

A. That is correct.

Mr. Oliphant: Do you know, Mr. Wheat, who pays that expense and whether that inbound elevation into the elevator, that charges does not carry with it the transferring out of the elevator into the car for farther movement?

Mr. Bradford: Well, I will put it this way:

Q. Is that charge included in the freight rate?

A. There is no unloading charge included in the rail freight rate,no.

Q. Now, will you refer to your exhibit number 21, on page 39: Mr. Childe asked you about a local rate from Peoria to Lacrosse, Indiana as compared with a local rate from Chicago to Lacrosse, Indiana. Do you know where Lacrosse is located?

A. It is located up near Chicago, I believe in the northwest part of the state.

Q. Well, is it reasonable to expect that there would be any close level of rates, that is, in the amount of rate, from Chicago and Peoria to Lacrosse as Lacrosse is practically [fol. 802] within the switching limits of Chicago?

A. Well, of course, Mr. Childe picked out a point there where the difference is very wide. If he had gone on down a little farther he would have found some where the difference was very slight and, of course, the story there is very different.

Q. You are through with the answer?

A. Yes.

Q. Has there ever been any real relationship in the local rates from Chicago and Peoria to the State of Indiana?

A. No, there is no relationship at all.

Q. Do you know the local rate from Peoria to Evansville?

A. Yes, sir; 65 cents.

Q. Do you know the local rate from Peoria to Louisville?

A. Yes, sir; 18 cents.

Q. And to Cincinnati?

A. 18 cents.

Q. Do you know why those rates were published in that manner?

A. I think I do. In my opinion they were published as an equalizing basis to points in the southeast with the movement through St. Louis.

Q. So for you to establish any basis or definite relationship between Chicago and Indiana points and Peoria and Indiana points is practically without question, isn't it?

A. It is so long as equalization in the southeast will not be given any consideration.

[fol. 803] Mr. Bradford: That is all.

By Mr. Root:

Q. Mr. Wheat, I understand you to testify that there has been a rate adjustment between Peoria and the Chicago markets and that the permitting of reshipping privileges on ex-barge grain has broken that adjustment between the two markets, is that correct?

A. Well, it hasn't broken the rail adjustment, Mr. Root, if that is what you mean.

Q. Well, in effect it has. As I understand you, it prevents you from getting the amount of grain that you think you should have?

A. Yes, it has had an effect upon the movement of grain to Peoria but not upon the rail.

Q. Well, there is a rail rate adjustment, isn't there, between Peoria and Chicago?

A. No stated relationship so far as origins in Illinois are concerned, to Peoria and Chicago, there is no stated relationship between the rates.

Q. Well, as I understood, it costs you about two cents more to ship to eastern points from Peoria than it does from Chicago, doesn't it?

A. We were talking, Mr. Root, about the proportional rates from Chicago.

Q. That is what I mean, the proportional rates, yes.

A. If you will refer to my exhibit number 21, pages 26 to 29, inclusive you will note there a great number of origins [fol. 804] in Illinois where the inbound local rate must be increased by specific amounts before we can even apply the outbound proportional rate.

Q. Well, now, doesn't the fact that most grain out of Chicago now that is going to the east is shipped by lake nullify the effect of the adjustment there?

A. Well, according to the records I have been compiling, the heaviest movement of grain from Chicago to the east is by lake. I have tried to show that.

Q. Doesn't that nullify any adjustment which might have been portrayed to be shown by these tariffs, between Chicago and the Peoria market?

A. It doesn't nullify the adjustment so far as the all rail movement is concerned between Chicago and Peoria.

Mr. Bradford: Will counsel indicate what he means by movement to the east?

Mr. Root: Well, what I mean is grain that is shipped from the Chicago market by rail,—shipped to the Chicago market by rail and then east by lake.

Mr. Bradford: Well, all Central Freight Association territory is east of Chicago.

Mr. Root: I know.

The Witness: Well, Mr. Root, according to the figures which were given by Mr. Tannehill there has been a considerable movement of grain out of Chicago by rail. In [fol. 805] fact, as I stated before, 16 per cent of the total inbound barge movement went out by rail. There is also shown in my exhibit, on pages 6 and 7, the amount of grain forwarded by rail. In other words, up until November 25, 1939 there have been 20,445,000 bushels of corn forwarded from Chicago by rail, 28,669,000 by lake. Now, I would say there was a considerable rail movement from Chicago. When we get to oats,—as long as you have asked me the question I am going to answer it,—the records we have indicate that up to and including November 25, 1939 there were 12,146,000 bushels of oats forwarded by rail, 449,000 bushels forwarded by lake, which was also a considerable movement. Up to and including November 25, 1939, according to the records we were able to get, wheat shipped by rail was 12,575,000 bushels and by lake 9,712,000 bushels. Again I would say a considerable movement by rail. Soya

beans up to and including November 25, 1939, by rail 2,576,000 bushels, by lake 10,024,000 bushels. Now, so far as soya beans is concerned, 80 per cent, approximately 80 per cent moved out lake but when you get to the other grains you have an entirely different situation, so the movement out by rail is an important factor.

Mr. Enoch: And those figures you just gave do not include the products that moved by rail?

The Witness: Oh, not at all.

By Mr. Root:

Q. Nevertheless, the shipment by lake is very, very [fol. 806] important.

A. Yes and so are the shipments by rail very, very important.

Mr. Root: That is all I have.

By Mr. Macaulay:

Q. Mr. Wheat, in the Peoria district there are a number of business concerns there that use grain of various kinds, principally corn?

A. Oh, yes. By far the greatest number or greatest proportion of all our grain is corn.

Q. Do you know whether or not any substantial amount of that grain is trucked into these industries and processed?

A. I doubt very much, Mr. Macaulay, if there has been a bushel trucked into the industries. Now, I wouldn't make that as a positive statement but if there has been any it has been so very, very slight that it has absolutely nothing to do with it.

Q. It all comes in by rail?

A. Oh, no. You asked me if the grain was trucked into the industries and I told you no. If you ask me if there was grain trucked into Peoria, yes.

Q. And what use is made of it when it gets to Peoria?

A. It goes into elevators.

Q. And then it is used for local consumption or is moved out?

A. It is generally moved out by barge.

Q. You mentioned that if the reshipping rates are eliminated you would have a better opportunity to compete for [fol. 807] grain. Did I understand you to say that?

A. I said if they were eliminated,—I did not make the statement but I will make it now,—that if the proportional

rates from Chicago are restricted so that they will not apply on ex-barge grain that we will be in a better position than we are now.

Q. And what do you mean by being in a better position?

Exam. Taylor: Well, now, we went all over that. Mr. Childe went all over that with him, and if you were here you should have heard it.

Mr. Macaulay: I was here, your Honor. I didn't understand that part of it.

Exam. Taylor: He certainly went into that once and I don't see the use——

Mr. Macaulay: I understood him to make the statement about being in a better competitive position but I would like to have that one statement elaborated. It will take one sentence and I am through.

The Witness: If you will tell me what statement you want elaborated, Mr. Macaulay, I will endeavor to do it.

Q. What did you mean by "being in a better competitive position"? Do you mean you would get more grain into the Peoria market than you now get?

A. It is our hope that we will get more grain into the Peoria market and ship more grain from the Peoria market. [fol. 808] Exam. Taylor: You would handle more grain, in other words, through your market?

The Witness: That is correct.

Exam. Taylor: Any further cross-examination of this witness? Witness excused. Next witness.

(Witness excused.)

Mr. Brown: Mr. Examiner, there is a witness here from the Chicago Board of Trade. He is not my witness but he tells me he has only got a statement that will cover not more than a half page and he would like to get on because he cannot be here in the daytime.

Exam. Taylor: What is his name?

Mr. Brown: E. R. Bacon.

Edward R. Bacon, Jr., was sworn and testified as follows:

Direct examination.

The Witness: I am Edward R. Bacon, Jr., president of the Edward R. Bacon Grain Company. I just wanted to have the privilege, if I might, of reading a short statement

for the record. The firm of E. R. Bacon Grain Company is on record as being of the opinion that the reshipping rates from Chicago to eastern points should continue to apply on grain arriving at Chicago via River or barge. However, as we are directly interested in grain arriving at Chicago by truck we are of the opinion that such grain is entitled to the same treatment with respect to the application of the [fol. 809] reshipping rates as is accorded to barge grain. We now go on record to the effect that if the reshipping rates are to continue to apply on barge grain it is our conviction that such reshipping rates should be applied also on truck grain. A good part of the grain that arrives at Chicago by truck comes from the same territory of production and goes to the same territory of consumption as does grain that is moved here by barge and we insist that no good reason can be advanced for the railroads unduly preferring barge grain to the undue prejudice and disadvantage of truck grain.

Exam. Taylor: Is that all you have?

The Witness: That is all I wanted to say.

Mr. Brown: Mr. Bacon, do you operate an elevator in Chicago?

The Witness: Yes.

Exam. Taylor: Where is it located? Is it located on the water?

The Witness: Yes, sir.

Exam. Taylor: Any questions by counsel?

Cross-examination.

By Mr. Enoch:

Q. May I ask, Mr. Bacon, have you received any corn in the last year or two by barge?

A. No. We are not equipped to unload barges.

Q. Would it be unfair for me to ask you to give approximately the amount of corn that you have received this year [fol. 810] at your elevator? Would you care to state that?

A. Yes, if it would be to any advantage on the record. About four million bushels this year.

Q. This year. And a somewhat similar amount last year?

A. No, a lesser amount last year.

Q. Have you any intention of going into the business of receiving corn that comes down the river?

Exam. Taylor: You mean by barge?

By Mr. Enoch:

Q. By barge. Have you in mind engaging in this barge grain business at your elevator?

A. Yes, just the moment we could be convinced thoroughly that it was best we would change.

Q. The only reason I ask that was, as I understand your direct testimony, that was the only reason that I could see why you would be in favor of having the continued application of these outbound proportional rates on barge line grains.

A. No. My statement simply meant that there is a lengthy statement to which we are a party. Wouldn't that answer you? In other words, we were one of all the Chicago shippers operating on the water who made this petition that these rates be continued.

Mr. Enoch: That is all.

By Mr. Brown:

Q. Mr. Bacon, will you unload in one day as much as 15,000 to 30,000 bushels from trucks?

A. Yes, sir.

Q. And do you usually hedge that grain in the pit that [fol. 811] you unload from the trucks?

A. It is treated exactly as any other grain. My answer would be "yes" with that qualification.

Mr. Brown: All right.

Exam. Taylor: Is that all, Mr. Brown?

Mr. Brown: Yes.

Exam. Taylor: Mr. Cole?

By Mr. Cole:

Q. Mr. Bacon, I understood you in answer to Mr. Enoch to say that you are not handling any grain that arrives in Chicago now via water?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. And is it correct for me to understand that you are interested in the continued application of these proportional rates to the water grain in order that the truck grain may be treated the same as the water grain and secure this proportional rate?

A. No, sir. If it is granted to barges we insist, as I have stated here, that it should be afforded to truck grain.

Mr. Cole: I see. Thank you.

By Mr. McCarthy:

Q. Mr. Bacon, do I understand by that that it would be perfectly satisfactory with you that the suspended schedules be found justified?

A. Oh, no. We are definitely of the opinion that the rates should be continued.

Q. On barge?

[fol. 812] A. Ex-barge.

Q. And in order for you to get any benefit it then must be made applicable on truck grain?

A. Exactly.

Mr. Oliphant: I don't think the witness stated that in his prior answer. He anticipates handling barge grain, as I understand it.

Exam. Taylor: I think he was anticipating at that time, Mr. Oliphant. Mr. McCarthy's question went to the present conditions, what were his present conditions? The other went as to the future.

The Witness: That was as I understood it, Mr. Examiner.

Exam. Taylor. That is the way I understood it. We got confused yesterday along the same line with one of Mr. Macaulay's questions.

By Mr. Root:

Q. Mr. Bacon, as a member of the Board of Trade and one who, I assume at least, is interested in the Chicago market, are you in favor of retaining the reshipping privileges on barge grain even though you might never get reshipping privileges on truck grain?

A. I have so stated already.

Q. Will you state in a general way the territory from which grain is trucked to Chicago by you?

A. I think it could best be described by perhaps drawing a radius of a progressive distance, so to speak. Perhaps mostly within 60 to 65 miles of Chicago, although in in-

[fol. 813] stances very much farther.

Q. In what particular direction?

A. Northwest and west and south, an entire circle all the way around the corn belt.

Q. How far down the Illinois valley do you?

A. We have gone down to—Mr. Examiner, could I ask a man who knows much more about that so that I won't make a misstatement? It is way down—one of our men sitting back there, he handles that, he knows more about it.

Exam. Taylor: Is there any objection to his refreshing his recollection?

Mr. Root: Not at all.

The Witness: Paris, Illinois is as far south as we go.

Q. How far is Paris from Chicago, approximately?

A. Oh, you are going to get over my head again.

Q. 150 miles?

A. Farther than that.

Exam. Taylor: Is that all your questions, Mr. Root?

Mr. Root: Yes.

Mr. Brown: I would like to ask Mr. Bacon another question.

Exam. Taylor: Let us see if they are through here first.

Mr. Childe: I have a few questions.

Exam. Taylor: All right, proceed.

By Mr. Childe:

Q. Does your company also handle rail grain at your elevator?

A. Oh, yes.

[fol. 814] Q. And do you reship it to the east on these reshipping or proportional rates that are involved in this proceeding?

A. Do we make shipments east of here by rail?

Q. Yes.

A. Oh, yes.

Q. On the proportional or reshipping rates?

A. We do a rail business east of here.

Exam. Taylor: On truck grain?

The Witness: Oh, no. Do we make shipments, he has asked me. Yes, we ship by rail and by water in any direction we can get a buyer.

By Mr. Childe:

Q. The shipments which you forward out of Chicago on reshipping or proportional rates and reshipped by water or by rail would still be entitled to the reshipping rates?

A. Pardon me, I didn't understand. Do you mean do we ship that barge grain?

Q. No, I was asking you about rail.

A. Let us get it right then. We ship rail in any direction.

Q. Now, how about the grain that you receive by truck? Do you ship that out by rail?

A. No, I cannot except in a very few instances, where there is no necessity for transit tonnage behind it.

Q. You do not ship anything, then, on the local rates out of Chicago which are higher than the reshipping rates, as I understand you?

[fol. 815] A. No.

Q. Could you as a practical matter be able to market your grain out of Chicago on those local rates?

A. Not if the differences were very great. I am not definitely familiar with all rates, so maybe I am not answering your question.

Q. Well, for your information, the local rates are here shown as being anywhere from 10 cents a hundred pounds down, over the reshipping rates.

A. There are rates out of Chicago that we have from here where we don't have to have any. Those are the rates I was referring to.

Q. Yes, but where the local rates are higher than the reshipping rates, as I understand your answer, you do not ship on them?

A. That is correct, sir.

Q. Do you ship your truck grain out by lake?

A. That is the way with the big majority, that the big majority, practically all of it goes.

Q. If you had the benefit of the reshipping rates out of Chicago by rail on grain that came in by truck would the railroads get more of that business?

A. The volume of our rail business out of Chicago would definitely be increased.

Mr. Childe: That is all, thank you.

By Mr. Brown:

Q. Mr. Bacon, do you care to state what prompted you to [fol. 816] go into the business of unloading grain from trucks,—the competition?

A. Competition forced us to get more nearly in line with our competitors.

Q. What competition was that?

A. It was the barge grain, the grain that moved in here via water and we went into the whole thing from A to Z and the best of our opinion was we thought that this barge movement would work out better than a water movement, so we——

Mr. Enoch: You mean the truck movement.

The Witness: I beg your pardon. The truck movement would work better than the barge movement. Does that answer you?

By Mr. Brown:

Q. Yes. So your truck movement is in competition with the barge movement?

A. Definitely and only because of that.

Mr. Brown: All right.

Exam. Taylor: Anything further from this witness?

Mr. Enoch: May I ask one more question?

Q. As I understand your testimony now, the great bulk of your inbound trucked corn comes from points within a radius of 65 miles or thereabouts from Chicago?

A. Yes. I might have to raise that a little but it is approximately that.

Q. 70 miles?

A. Yes, I would say 70 miles would cover it.

[fol. 817] Mr. Oliphant: Mr. Examiner, may I have one more question?

Exam. Taylor: All right, Mr. Oliphant.

By Mr. Oliphant:

Q. Mr. Bacon, if this adjustment was such that it would eliminate this barge competition that forced you into the truck competition, would that then make you go back to the rail and quit this truck competition or this truck movement that you are participating in now?

A. That is a pretty tough one. You mean if the barges no longer operated would we operate by truck?

Q. I mean if this adjustment which is under suspension here would be permitted to go into effect, in other words, the proportional rate to be restricted so as not to apply on barge

grain, would that permit you then to go back to the rails and quit your own trucking?

A. No, it would not, simply because the barges would be able to move grain in here cheaper than the rail rates and I have to bring grain in here competitively with my competitors.

Mr. Oliphant: That is all.

Exam. Taylor: Is that all?

Mr. Sparrow: I would like to ask one question. Mr. Bacon, do you operate your own trucks?

The Witness: No.

Exam. Taylor: Is that all? Witness excused. Next witness.

(Witness excused.)

Mr. Root: I call Judge Hayes.

[fol. 818] FRANK H. HAYES was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

A. Frank H. Hayes.

Q. And you reside in Morris?

A. Morris, Illinois.

Q. What is your occupation?

A. Well, I am a Judge part of the time and a farmer the rest.

Q. Judge of the Circuit and Appellate Court?

A. Yes.

Q. Describe your farming interests, Judge.

A. Well, I have land in Grundy County and Kendall and LaSalle and Kane.

Q. Several farms in all?

A. That is right.

Q. You understand that the issues in this case are whether or not the reshipping privileges should be removed from ex-barge grain?

A. Yes, that is the way I understand it.

Q. Now, do you feel that you have an interest in this case?

A. I do.

Q. Will you state what that interest is, please?

A. Well, during the time that I have been engaged in farming, which runs back about 25 years, after the water transportation came it brought us a net of five cents a [fol. 819] bushel in that valley more than we had before for our product. For instance, take on corn prior to the time that the waterway was in operation, when I would go to sell corn the bid I would get would be nine and a half or ten cents a bushel under the Chicago cash market. Since the waterway has been operating I am able to sell it within about five cents of the Chicago cash market. Does that explain the point you want?

Q. Yes. Now, do you care to make an estimate in dollars and cents how much that means to you and your tenants in any particular year, we will say an average of 40 bushels of corn to the acre?

A. Well, that is just a matter of multiplying, but, of course, it is substantial, a substantial amount to either any of my tenants or to myself. Lots of years it has been the difference between a balance sheet that showed a profit and one that if I hadn't it we would have been in the red.

Q. How long have you lived in Morris, Judge Hayes?

A. Over 30 years.

Q. For the benefit of this record I wonder if you would state briefly the history of this waterway as you have observed it in Morris during the time that you have been there?

A. Well, when I heard my friend Mr. Brennan testifying here this afternoon about the danger of the Board of Trade being moved off the exchange building down to the river it almost is history repeating itself. Originally the Illinois [fol. 820] and Michigan Canal drew its grain from about the same boundaries as the Illinois River is now drawing it. From 1848 to 1879 or 1880, from that same belt the grain came to the river, to Morris and to Seneca, Marseilles, Ottawa and on down and was transported by water almost exclusively. On Canal Street, which was the street in Morris that had the docks on for loading, we had 19 warehouses, grain warehouses built along that street. Then starting in about 1880, 1881, the railroads, the Rock Island and the Chicago & Alton and the Wabash and the Illinois Central and the Big Four crossed the territory and an ele-

vator went up at Mazon and one at Gardner and one at Dwight and one at Fairbury and all that was left o Morris was three or four millers up against the town. T e rails could do the job and did for 25 or 30 years splendid , gave us good service, good rates and put the old Illinois and Michigan Canal out of business and properly so, but these investors that had their elevators on Canal Street lost their investment. The only record of it you will find now is in the court house where there were receiverships and bankruptcies, and all that business passed with the progress that was being made in transportation. Then there came a time, starting in about the time that Deneen was governor in this state, where there was a strong public demand to improve the Illinois River. Governor Deneen, Dunne, Small, all, at every session of the General Assembly in their message recommended it, every United States Senator. After some 20 or 25 years of agitation the people of the whole [fol. 821] state passed a twenty million dollar bond issue, not in the Illinois valley; it carried in the City of Chicago, it carried the entire State of Illinois, throughout the state. At that time there was opposition to it and a prediction that they never could make a navigable stream out of it, that it was so flat it would fill up with mud and it never could be made to operate and that it would be a political football, there would be corruption with the taxpayers' money. Finally the State started in as a state project with the twenty million and has done a very worthy job. In 1930 I think it was the Federal government took it over and finished it as a federal project. It has proved it is successful. The taxpayers and the public have got in the improvement every dollar they have in it paid back. It is a great blessing to the Illinois valley and its farmers. It would be a mistake backward now to try to smother it, try to stop it. You may stop it for a day or a week or a month but in the end it will stand up, just like our elevator boys sitting out there now. The first year it operated they had their cooperatives at Mazon, they had them at Dwight, at Gardner, and they fought it. They were on the railroads and they didn't want to see it exist. We had one little fellow, a country boy, from over in County of—from over in Kentucky,—or, rather, from over in Kankakee County come in there and put a small elevator on the river and I tell you the first year that he operated was pretty [fol. 822] rough going because all the machinery of the

grain trade was pitted against him but with all the opposition Finnegan succeeded and now these other elevators have got in line and they are taking advantage of that cheaper and more efficient transportation and every one of them is shipping to the river and what is true of Morris will go on down the valley and I would hate to see the government after as good a job as the Army did, see some other branch go counterwise. I think that is about as much, Mr. Root, as I had in mind.

Mr. Root: I think that is all I care to ask the Judge.

Mr. Enoch: I don't think he should ask you to go any farther than you have, Judge.

Exam. Taylor: Cross-examine.

The Witness: You know, 25 or 30 years ago you used to come down and make life miserable for me, Bert.

Mr. Enoch: I wish that were offered as a compliment to me. I am sure it was not, although intended to be such.

Cross-examination.

By Mr. Brown:

Q. Judge, how far from the Morris elevator are your farm lands located?

A. Well, I have got some of them as close as two miles and the furthest is 40 miles.

Q. And is that all trucked over to the river elevators?

A. Yes.

Q. You do not operate an elevator, as I understand it? [fol. 823] A. No.

Q. So this grain of yours and your tenants also is trucked over to Morris?

A. Yes.

Q. Do you or your tenants do your own trucking over there?

A. Well, that depends on the bids. Now, if they will bid me on the farm cheaper than I can afford to truck it, or the tenant can; why, we will sell the people the grain on the farm. If I get a better bid at the elevator I will take it down. I think it breaks even, averages about half and half.

Q. What has the difference got to be before you will truck it yourself?

A. I usually figure about a cent.

Q. A bushel to get it in there?

A. Yes.

Q. Now, you spoke about you net five cents a bushel more than you used to. Now, do you mean by that that the price that you get delivered at the Morris elevator is quite consistently five cents a bushel under——

A. On corn.

Q. —on corn under the Chicago price of the same day?

A. That is correct.

Q. You spoke of Len Small. Wasn't Len instrumental in spending a lot of money for roadways through Illinois, highways?

A. That is right.

[fol. 824] Q. At public expense?

A. Yes, and did a very good job of it.

Q. Yes. He was reelected on it as I recollect it.

A. He gave the people more pavement than we ever dreamt we would have.

Q. When you make it with public money you can do a lots of things, can't you?

A. Yes, but there is a lot of other public money goes that we don't have any pavements or anything else usually.

Q. Well, I don't need to ask your politics. Well, now, when the price was generally ten cents at the country station under the Chicago price was that because the rail rate was so much higher than the barge rate?

A. Well, I have never analyzed that. For instance, if I have got a crop of corn to sell I will get ahold of a Chicago paper and see what the cash market was that day and then go to Decker and see how good a price I can get. In the old days I just knew it just wasn't in the cards to get more than about nine and a half under what they were paying up here. Now, I never broke it down to find how much the elevator got or how much Brennan got for selling it up here or any other items that went into it but I do say that now I can go direct to these boys on the river and get them to bid me up where I am about five cents under the Chicago cash price.

Q. You do not patronize your friend Brennan any more?

[fol. 825] A. I would if it would give me as good a price as this is.

Q. Judge, when you deliver your grain at the elevator at Morris and get your money you are through with it, aren't you?

A. Yes.

Mr. Brown: That is all.
Mr. Cole: May I ask one question or maybe two?
Exam. Taylor: Yes.

By Mr. Cole:

Q. Judge, you now move all of the grain that is raised on your farms via this water method of transportation or, rather, you sell that down there at the water, don't you?

A. No, once in a while I will get a—take, for instance, at Batavia, if they are bidding pretty well up to what I can get at Morris I will leave it go rail because the haul is so far and then I am a little bit interested in keeping the elevator there so that if I do get in a pinch, why, we have got that facility.

Q. Do you understand, Judge, that if this rule that is proposed is permitted by the Commission that there will be an impossibility of continuing the movement of grain from your vicinity of Morris to Chicago via water?

A. No, I didn't have that understanding and do not now. The point in it that I had in mind is that the Illinois waterway ought not to be treated any different from any other waterway that leads into the Great Lakes or into the City [fol. 826] of Chicago and if there is going to be a re-loading privilege going east for the farmers of Wisconsin that load onto Lake Michigan, or Minnesota or Michigan, us people down the valley on the Illinois River ought to have the same privilege and it just isn't any argument that because somebody has an elevator or a railroad that is a little point that we ought to be handicapped and held back on that account.

Q. In your mind do you think that the carriers do have, for hearing here is permitted to go into effect that it would change, that that in itself would change in any way the extra price that you would get for your grain because you were able to ship it via water to Chicago?

A. Well, the man that is buying it in order to send it east has got to pay more freight to have it go east. Of course, it would come out of me eventually.

Q. Well, Judge, when they come down there and buy grain from you at Morris and if out of all of that grain that did move into Chicago via that waterway only one bushel out of five moved east of Chicago via the rail, how could you press down any benefit to the whole mass, to the other four

bushels of grain to this proportional rate privilege east of Chicago?

A. Well, I never attempted to trace that down. The only answer I can make you on that, that if I get a good price for four bushel- of it I want to get the same good price for the fifth bushel.

[fol. 827] Q. Then if it was only possible to give you the price on the one bushel out of five that moved to Chicago via the waterway you feel that there should be some arrangement made so that the other four bushel- could be put into that same price range with that one bushel out of the five, is that it?

Mr. Root: Pardon me. I didn't hear that question. Will you read it for me, please?

(Question read.)

Mr. Root: If your Honor please, I object to that. I think it is outside of the scope of direct examination. The Judge has merely testified that he was getting more. He does not profess to be a rate expert here or a rate man.

Mr. Cole: This has nothing to do with rates. It is what he bases his plea on that he is getting more money for his grain because of this proportional rate east of Chicago.

The Witness: Well, of course, it is not a plea on my part. It is just simply a fact that I did not get it before the waterway and I am getting it now, that is just a fact that exists. I misunderstood.

Q. Look, here is the thing, Judge, that I am trying to draw to your attention: The Illinois River waterway has been made, has it not?

A. That is right.

Q. It is there?

A. And a good job.

[fol. 828] Q. It is there?

A. And it works.

Q. It is there?

A. That is right.

Q. We are not going to dry it up, are we?

A. I hope not.

Q. After we make these changes in our tariffs you are convinced that your waterway is still going to stay there, aren't you?

A. I would think so.

Q. If it is cheaper to move your grain from Morris to Chicago in barges on that waterway what can the railroads do to interfere in the slightest with the price that you are to get for your grain at Morris because of the water transportation that you have available for you at Morris to move your grain from Morris to Chicago? What in the world can we do to affect that price by one-tenth of a penny?

A. If you are giving your Wisconsin farmer and your Minnesota farmer and your Michigan farmer an eastern market by giving this re-loading privilege from the water to rail and go east that way I want the same thing and every other farmer that is in Illinois that is close to a water route wants it and there is no reason why we should be discriminated against or why in your schedule you should pick out the Illinois waterway and exclude it from the benefit.

Q. Now, Judge, with that proportional rate being in [fol. 829] effect for at least four years, if it were shown that of all the grain that moved to Chicago on the waterway only 20 per cent of that grain moved out under the proportional rate do you think that that proportional rate privilege had any direct bearing on the price that you were able to secure for any of the grain at Morris?

A. Well, of course, I haven't any way——

Mr. Root: I object to that unless you state all the facts concerning it.

The Witness: I haven't any way of passing on that intelligently. All I know as a farmer is that the waterway has made me a nickel a bushel and that I do know and I can show it from my receipts. Now, when it comes into an involved proposition of these tariffs and allocating them and analyzing them, I won't attempt to do it, I can't do it, I am not in that business.

By Mr. Cole:

Q. All right. Now, Judge, then will you take this set of circumstances and consider it: If the grain that you have been selling at Morris, that you have been getting an extra nickel a bushel on because you have been able to sell it at Morris for transportation via the water line,—if that grain that you have gotten a nickel more for now has been moving to Chicago and then has been moving out of Chicago over the lakes and that that method of doing business is the method that has enabled those buyers at Morris to pay you

five cents more a bushel for it and if that same situation is to continue do you anticipate any difference in that nickel [fol. 830] more than you are getting?

Mr. Root: If your Honor please, I object to that on the grounds that the witness has stated that he doesn't know anything about these rates. He has stated here that he knows he is getting a nickel a bushel more and that has been his entire statement.

Mr. Cole: I don't want to argue. I am trying to get why he thinks he is getting a nickel more and why he thinks this thing is going to bother him.

The Witness: I don't think. I know that.

Mr. Root: He knows that.

Mr. Cole: If this gentleman who objects to my question——

Exam. Taylor: Mr. Root.

Mr. Cole: If Mr. Root, who objects to my question, will admit that the man don't know anything about what goes into this nickel more, if he will definitely admit that now on the record I will quit cross examining him.

Mr. Root: The Judge has admitted that he doesn't know it. I will put on other witnesses who will show how that is all made up. We are going to develop that. It so happens that the Judge, testifying as the last of our witnesses, is the first and I wish you would bear that in mind in considering the testimony.

Mr. Cole: Oh, sure.

Mr. Root: We are going to put men on all down the line, of course. He is the producer at the end. We will develop [fol. 831] that fully. My only purpose in putting him on was to show that as a producer he is getting a nickel a bushel more.

By Mr. Cole:

Q. Well, Judge, what do you think will happen to you as a farmer at Morris if this proposed railroad should change, or the tariff change is permitted to become effective?

Mr. Root: Well, I object to that question.

Exam. Taylor: Objection overruled to that.

The Witness: If the railroads,—or the Commission here take and cut off our eastern opportunity to ship on these

rates, the same as grain originating on other water courses, it is going to hurt. If that goes further and there is more handicaps and more handicaps, either by the state or the government or the railroads, why, they probably will put the Illinois waterway out of business eventually.

By Mr. Cole:

Q. Judge, how much do you think it is going to hurt you?

A. I can't say but I do know this, that there just isn't any reason why the Illinois waterway should be discriminated against.

Q. Well, eliminate from your mind this question of discrimination. How much do you think that this will affect and change your personal situation if this change is allowed to be made effective? Do you think in any way this is going to change the price?

A. There is no way that I can give you to the fractional part of a cent what advantage it is. I can't say that. All I [fol. 832] do know is that I now have got a chance to go east the same as grain coming in via the Great Lakes. I know that is beneficial to me. Now, if you get that away from me it is going to hurt me some. I can't tell you whether it is going to be half a cent or a cent or a cent and a half because there are just too many things entering into that there that I have got to build on hypothetically.

Q. All right, but with all the hypothetical things that you think may be involved in there now and picturing it as dark as you care to picture it, do you think that this change, if it is permitted to become effective, will hurt you in the amount of money that you are able to secure for your grain at Morris?

A. I do.

Q. You do?

A. Yes, sir.

Q. And that is based upon the fact that it is taking the price away from you?

A. It is taking a market away from me, certainly.

Q. It is taking a market away from you?

A. Yes, sir.

Q. Do you know now how the grain that is being shipped on the waterway into Chicago is moving out of Chicago? Do you know where that market is now?

A. Only as I am told. I go to the elevator and I ask him what he will bid for number 2 corn, for instance. He gives

[fol. 833] me his price. If I think that is enough I make the delivery and I take the money and put it in my pocket. The only thing I do know is that I am getting a nickel more than I got before we had the waterway and every other farmer in the valley knows that.

Q. All right. And if you would still get the same nickel more if this change went into effect you would not be concerned with the change, would you?

A. That is just inconsistent.

Q. Well, let us take it as a hypothetical question: If you were still getting that extra nickel more you wouldn't object?

A. It is like assuming that two and two is five.

Q. You are convinced that this change will affect you in the price that you get at Morris for your corn?

A. That is right.

Q. That is the only way it could hurt you, isn't it?

A. That is right.

Mr. Cole: That is all. Thanks, Judge.

Exam. Taylor: Anything further?

By Mr. Enoch:

Q. Judge, you seem to be very much concerned about some alleged discrimination against this barge grain coming from a point like Morris into Chicago. You think it ought to take this proportional rate outbound from Chicago the same as all rail grain; that is your position, isn't it?

A. Well, now you are speaking in terms there that I don't follow you. I want to be treated just the same as some [fol. 834] farmer that is raising corn up in Wisconsin and he loads it on the lake front and he comes down here and he has a right to go east on a waterway rate. I want that schedule the same, not to have it printed in there, "This shall not apply to the Illinois Waterway."

Q. I thought you understood my statement or your counsel would have explained,—perhaps he has and I am not clear about it,—what is involved here is an effort on the part of the eastern lines to prevent the application of the so-called proportional rate eastbound out of Chicago on this barge grain from a point like Morris. Now, I understand your position is that to deny the application of that proportional rate on barge grain is a discrimination. That is your position and you so stated. Now I wondered if you would

also feel that there was something to Mr. Bacon's point, to whom you listened. He is the man who preceded you on the stand. He does not get any grain by water from Morris but he gets three or four million bushels a year by truck that comes from Morris and points even farther away from Chicago than Morris, but largely from points within a radius of seventy miles of Chicago. Now, do you think that if you are discriminated against, if the proportional rate is denied you on barge grain, that Mr. Bacon is discriminated against because he cannot take that proportional rate on his inbound trucked grain?

A. Well, I wouldn't have any way to pass on that intel-[fol. 835] ligently. As far as I am concerned I am willing to let Bacon have just as good a deal as I get, just so that I don't get euchered out of it and the Wisconsin boy and Minnesota boy get it.

Q. Has he the same right to it that you have?

A. I have never given any thought to it. I don't know.

Q. Does any reason occur to you now why there should be a difference in the respects we just mentioned between grain inbound by truck, that a man sends his own truck out forty miles from Chicago, gets some grain and puts it in it and brings it into Chicago in an elevator and then sends it out and then he goes out and puts it in the boat and puts it in an elevator and then wants to ship both inbound loads to New York, do you see any distinction between those two outbound shipments? Should they have the same rate or a different rate?

A. Well, as a superficial view of it I don't see that there should be any difference but I would hate to make any recommendation because I have had no experience.

Q. Well, as a Judge you would have some hesitancy in denying it to the inbound truck grain and giving it to the inbound barge grain?

A. I am interested in this as a farmer.

Q. In whose administration was it when this twenty million dollar appropriation was made?

A. It was either under Deneen or Dunne. I have forgotten about it.

[fol. 836] Q. That was a good many years ago, wasn't it?

A. Yes.

Q. When did they finally exhaust that supply of money, do you know, on the Illinois waterway?

A. Sometime in the late twenties, when the government came to the rescue and took the project over.

Q. And assuming that they put the entire twenty million into the Illinois waterway in the early twenties, did the government start to work on it right after that in order to complete it for transportation?

A. Yes.

Q. And did they work pretty steadily on it?

A. Yes, they went along, there was a lot of construction work and the thing went along in good despatch I would say.

Q. And how long was it before you finally got barge line transportation out of Morris?

A. I believe it was in 1934, the late summer of 1934.

Q. Have you any idea, Judge, about the amount of money that the United States government put into that Illinois waterway, how that compares with the amount that you say was put in by the state, can you give us any idea?

A. Yes, I would say considerably more.

Q. Well, eight, ten, twelve, or twenty times as much?

A. Well, corn or oats I can tell you something about but when it comes to engineering I have got to pass it. I don't [fol. 837] think it was any more, though, than the State of Illinois gave the Illinois Central when they started, though.

Q. I am only interested in what they gave the Rock Island. Do you know whether the State of Illinois gave the Rock Island anything?

A. No, and I haven't any feeling against the Rock Island. You have done a splendid job.

Q. You think they ought to continue to operate down there through Grundy County?

A. But you got so high that with the price of grain we could not afford the luxury of travel on the Rock Island.

Q. Did you sell any corn this year?

A. Yes.

Q. What did you get for it a bushel?

A. Oh, I got from 46 to 55.

Q. I want to explain that I haven't the slightest doubt in the world, Judge, that when you say you made a nickel extra by reason of this barge line transportation that you meant just what you said and I am not trying to check up on you at all but it is always possible to arrive at the wrong conclusion when the facts are as complicated as they are in connection with a situation of that kind. Now, I was just

wondering if you would not be willing to tell us,—you sold your grain on a certain day for so much money and tell us where you sold it and whether you sold it to a river elevator or not? Can you do that for us?

[fol. 838] A. Over what period of time?

Q. No, just this fall you sold a batch of corn from one of these farms. It might have been one thousand bushels or two thousand bushels at a certain time. Now, could you tell us what you got for that, Judge?

A. No, I couldn't without looking at my books. I can furnish it to you if you want me to send it in.

Q. You say you sold some corn for as low as 46 cents a bushel?

A. Yes.

Q. Did you sell that to a river elevator?

A. I don't know now.

Q. Well, I am just wondering if you are not mistaken about that and whether or not you did not get more than 46 cents, because I sold some corn at least three hundred miles west of you for 40 cents a bushel.

A. At what time?

Q. Along about——

A. August?

Q. No, no, this year's corn.

A. Well, now, you said "this year." I thought you meant 1939.

Q. I am talking about this year's crop.

A. I haven't sold any.

Q. Have you sold any of this year's crop?

A. Not any of the new corn, no.

Q. When was your corn sold?

[fol. 839] A. Oh, I sold corn all during the year up till—I think I sold some as late as August and I got as low as 38 cents, you know,—yes, about 38 in July and August.

Q. What was the least price you got for it when you sold it in August?

A. I won't attempt to tell you. Now, if you want my actual sales, I will get them off the invoices, I have got records of them and will furnish it to you, but to just pick them out here I can't tell you.

Q. Was all this corn sold in August to a river elevator?

A. No. I sold corn in Batavia that went to the river. I think there was a driver—I think we either sold it to country elevators that eventually went to the river, except the

Batavia corn. I think that was the only corn that went rail. The corn at Verona, Illinois is all shipped via the river. You see, the rails are out of business down there. It isn't my fault if I go to an elevator that is on a railroad and they don't ship over your line. They do ship over the waterway because they can do it cheaper, you know.

Q. It isn't your fault unless you had something to do with getting that twenty million dollar appropriation.

A. I think I voted for it.

Exam. Taylor: Is that all, Mr. Enoch?

Mr. Enoch: Yes.

Exam. Taylor: Any other questions? Anything on re-[fol. 840] direct? Witness excused. Next witness.

(Witness excused.)

FREEMAN BRADFORD, was sworn and testified as follows:

Direct examination.

Exam. Taylor. Give your name to the reporter, Mr. Bradford.

The Witness: My name is Freeman Bradford. I am employed as traffic manager of the Indianapolis Board of Trade at Indianapolis, Indiana and have been so employed for the past 21 months. Prior to my present employment I was for 15 years employed as secretary and traffic manager of the Sioux City Grain Exchange of Sioux City, Iowa. The Indianapolis Board of Trade as an organization comprising among its member individuals, firms and corporations engaged in the grain and milling business in the City of Indianapolis and is the governing body of such business. The Board of Trade maintains a traffic department, one of the duties of which is to represent such members at all proceedings involving rates on grain and grain products. I received instructions from the transportation department of the Indianapolis Board of Trade to appear at this hearing and represent such members. There are 22 such members in the market engaged in the milling and grain business. The Elevator capacity in Indianapolis is six and a half million bushels. In addition we have two milling concerns engaged in processing corn into corn products and

one large flour mill. We are appearing here in support of [fol. 841]the respondents. I am familiar with the subject involved at this proceeding. The pricipal territory of production from which members in Indianapolis draw their supplies is the states of Illinois and Indiana. A check with the members of the Board of Trade indicates that the volume of grain secured from northern Illinois has, over a period of years, shown a steady decline due to the transportation rates published to other markets and particularly to Chicago. In another proceeding held in Chicago a short time ago involving rates on corn grits from northern Illinois to Battle Creek, Michigan a witness representing the Evans Milling Company of Indianapolis testified that the Indianapolis market had been practically eliminated as a factor in buying grain in northern Illinois. I inadvertently forgot to put down the number of that proceeding. It was an I. & S. case. I will supply the number if it is required. Since the advent of the barge lines serving the Illinois waterways the amount of grain received direct from stations in the territory contiguous to such waterways, so far as Indianapolis is concerned, has been almost nil. What little grain has been received at the market from that territory was that grain that was purchased from dealers in Chicago on the basis of reshipping rates from Chicago and who, in making such shipments, place Illinois waterway origin billing behind the shipments. I might add, Mr. Examiner, that that particular business was done by millers and not by elevator operators. This matter has been on the [fol. 842] docket of the Central Freight Association several times and we have, as a market, supported any proposal whereby the rail grain carriers from Chicago would restrict the application of the reshipping rates in such manner as would afford all mills and dealers an equal opportunity to bid for grain in any particular producing territory where the routes from that producing territory through the market are with the bounds of reasonableness. The matter was on Central Freight Association docket under No. 57157 and was subject to a conference in Chicago in January, 1939. There had been a prior hearing in December, 1938. This conference, however, did not result in the publication of the restriction of the application of the proportional rate in such manner that they would not apply on ex-barge grain received at Chicago or at South Chicago.

Another conference was held in June, 1939, at which time all of the present protestants were represented, as well as the shippers and markets in support of the respondents; all were given an opportunity to express their views. As a result of that conference the parties participating were advised on July 28th that the traffic executives of the Central Freight Association and Official territory lines had considered the matter and had recommended that the tariffs be amended, effective on legal notice, to discontinue the application of the proportional rates on ex-barge grain. The matter was subject to another conference on September 1, 1939, at which time the same protestants again stated [fol. 843] their views to the committee, but the parties in support of respondents' proposal to limit the application of the reshipping rates were able to convince the carriers that the cancellation was proper. As previously stated, the members of the Indianapolis Board of Trade have been most effectively eliminated in purchasing grain at stations in northern Illinois adjacent to the Illinois waterway for direct shipment to Indianapolis. The rates of the barge line operators, except the Federal Barge Line, are not subject to the jurisdiction of the Interstate Commerce Commission and are not filed in any such manner that our members can ascertain with any degree of certainty under what rate the grain is moved via barge to Chicago. They are aware of the fact that the barge movement to Chicago, coupled with the rail reshipping rates from Chicago, has created a condition which amounts to a monopoly in favor of a few elevator operators in Chicago in purchasing grain from this origin territory and a situation which forces Indianapolis dealers to purchase such grain from Chicago operators instead of from country dealers, thereby eliminating free, open and competitive bidding at the country points for the reason that it would be impractical, if not wholly impossible, for the operator at Indianapolis to purchase grain in barge lots for shipment to Indianapolis with the attending transfer from the barge to cars at Chicago. Mr. Examiner, I would like to read into the record a few rates that are not shown on the exhibit which I will later introduce. Now, [fol. 844] I cannot see any difference between grain arriving in Chicago by barge moving via some unregulated transportation system than grain moving by truck that is unregu-

lated and I would just like to point out for this record that this situation goes far beyond Illinois. Taking the station of Sheff, Indiana, a station on the Big Four Railroad, which is directly intermediate on the route from Chicago to New York, your local rate is 34½ cents, which is the local rate from Chicago. Now, grain arriving in Chicago via barge can move to New York, under the present tariffs, for 26 cents per 100 pounds. Now, to my mind that grain is no different whatever than grain arriving in Chicago by truck, nor is there and difference in grain arriving at any other point by truck. Now, if that grain arriving there,—if that grain arrived at Sheff, Indiana by truck it would pay 34½ cents, or 8½ cents higher than the grain from Chicago that moved in here via barge and Sheff is directly intermediate and I am of the opinion that there is a definite Fourth Section violation. Now, something was mentioned here today, the station of Paris, Illinois. If grain is trucked to Paris, Illinois the local rate to New York which the Paris operator would have to pay to get that trucked grain to New York is 38 cents per hundred pounds but the barge line grain into Chicago, moving via an unregulated transportation system, would be 26 cents and the truck grain to Chicago would be 34½ to New York. Now, it goes much further than that. We can take the station of Indianapolis. Trucked grain [fol. 845] into Indianapolis would pay 30 cents to get to New York while this barge line grain, that moves into Chicago, pays 26 cents. The next station that I am going to show is Glenwood, Indiana, which is practically on the Ohio State line, on the B. & O. Railroad. A load of grain trucked to Glenwood, Indiana and subsequently shipped via rail to New York would pay 30 cents per 100 pounds as against the grain that is moved by barge into Chicago and moves to New York under a rate of 26 cents. Now, the reason I am stating these figures is the normal market for grain produced in Indiana and Ohio is to the south and to the east. Due to transportation conditions it involves some water transportation. The south has been very rapidly taken away from us, which leaves the market for this grain to the east and certainly grain that has received no prior rail movement to Chicago and moves to New York for 26 cents is in a very fine position to move against grain that is produced at Glenwood, Indiana almost on the Ohio line at 30 cents. I would like to point out the situation at Craw-

fordsville, Indiana. Crawfordsville is just about 40 miles west of Indianapolis. Grain that is trucked into Crawfordsville pays 34 cents to New York as against the barge line grain from Chicago paying 26. I would like to refer for a minute to the proposition of these intrastate rail rates to Chicago. Here we have a situation where grain moves into Chicago via rail, that the carriers will not apply the 26 cent rate that will apply in connection with the barge line grain [fol. 846] unless that intrastate grain,—unless that intrastate rate is hiked up to the basis of the Illinois specific and that also is a discrimination against the buyer in Indiana who buys grain in northern Illinois for direct shipment to his plant with the idea or the intention of storing or processing the grain and shipping the product on to territory east of him. I will no wdirect my testimony to exhibit number 22. The exhibit consists of five pages and a cover. Page number 1 shows the production of wheat, corn and oats in bushels for the year 1937 in those counties adjacent to the Illinois waterways. We have separated the counties by first showing the total Peoria County and south and in the second section have shown the production in counties north of Peoria County and from which the principal movement is via barge to Chicago. Page number 2 is similar information for the year 1938. On page 3 we have shown the receipts of grain at Chicago via waterway for the years 1934 to 1938, inclusive. From this it will be noticed that the movement of corn on the Illinois waterways in 1938 was 10,236,000 bushels or 10,063,000 bushels more than in the movement in 1934. Reference is made to the movement of lake corn into Chicago in 1937, amounting to 18,720,000 bushels, but this includes 18,000,000 bushels of imported corn due to drought conditions affecting the previous crop. On page 4 we have shown the total amount of grain handled by water between Chicago, Illinois and St Louis, Missouri in connection with the Inland Waterways Corporation. On [fol. 847] this page it will be noted that the movement via the Inland Waterways Corporation of grain increased over four million bushels. Our reason for showing these figures is that in the testimony in I. & S. docket No. 4689, Grain from Illinois Points to the Gulf Ports for Export, this amount of grain was shown as representing the southbound movement via water from the Illinois waterways. We have then shown the total receipts of river borne corn

received at Chicago which increased in 1938 over 1937 approximately seven million bushels. The amount shown as moving via the Inland Waterways Corporation, added to the amount received at Chicago, would indicate a total movement of grain on the Illinois waterways of approximately eighteen million bushel. It may be conceded that some of the grain handled by the Inland Waterways between Chicago and St. Louis represented grain that was loaded at points on the Illinois waterways and moved to Chicago. We are here using the figures as they are reported in the testimony in I. & S. No. 4689.

By Mr. Oliphant:

Q. By whom. Mr. Bradford?

A. Well, there were two—there were about five or six different exhibits put in. I can go back and get them all but I know Mr. Sindell had an exhibit and quite a few others had them, as representing grain that moved on the Inland Waterways Corporation from your Illinois division.

Q. And that was purely a Gulf port rate case, wasn't it?

A. Yes. I am using these figures for a purpose. If you [fol. 848] will let me go ahead I will tell about it. In the last section of page 4 we have shown the production of wheat, corn and oats in the counties bordering on the Illinois waterways north of Peoria County. I note an error on page 4 opposite the word "oats" in the last section. The production should read "24,292,200 bushels" instead of "2,429,200 bushels." From this it will be noted that the production of corn in the counties indicated in 1938 was 8,200,000 less than in 1937 but the water borne movement into Chicago via the Illinois River increased 8,200,000 bushel. In other words, with an actual falling off in the production of corn the Chicago operators located on the waterways were able to overcome the falling off in production and actually increase their receipts from that territory by some eight million bushels; it really amounts to a change in position of 18,000,000 bushel of corn. The tota- production of wheat, corn and oats in the counties bordering on the Illinois waterways fell off 13,000,000 bushel and the amount received in Chicago via water increased 7,000,000 bushel. Another factor in this connection, which is not shown on the exhibit but to which we wish to call attention, is the fact that it is generally recognized that due to feeding opera-

tions on farms the average movement of corn out of the counties in which it is produced does not exceed 20 per cent. If the same figures are applied to the situation here before us the Chicago dealers are now receiving by water from this northern Illinois territory more than the average [fol. 849] shipping surplus of corn using the 20 per cent figures. We may admit that the price situation probably tends to increase the movement of more corn and make less feeding operations in this particular territory. On page 5 we have used Morris, Illinois as a representative origin point on the Illinois waterways and New York, New York as a destination. Here we have shown the total through charge, using the Illinois waterways rate of 4⅛ cents per 100 pounds from Morris to Chicago, plus the reshipping rate published by the rail carriers of 26 cents, making the through rate 30⅛ cents. As previously stated, we do not have any tariffs of the barge line operating from Morris, Illinois but the 4⅛ cent rate from Morris to Chicago was shown in the petition for suspension filed by Mr. Nuel Belnap September 1, 1939 for account of some Chicago elevators. We understand that this figure is made up 3⅛ cents for line haul barge service, plus 1 cent for trimming and insurance. The published through all-rail rate which the Indianapolis market would be compelled to pay is 35½ cents, or 5⅜ cents in favor of Chicago elevator operators using water service to Chicago. This same situation would exist to all Central Freight Association and Eastern Trunk Line territory. Another situation which we believe places the carriers in an anomalous situation is that the rail carriers operating from Morris and other points in that vicinity now publish intrastate rates to Chicago, which in the case of Morris is 5 cents per 100 pounds, but in connection [fol. 850] with a rate under which rail carriers here derive revenue, such carriers participating in the reshipping rates to Chicago, are not permitted the application of the same reshipping rates as is accorded grain moving to Chicago via an unregulated water line and as we have shown in the exhibit the balance charged in connection with such rail movement is 4½ cents higher than the reshipping rate applicable in connection with the river rate. The purpose of the 5 cent rate was to influence grain from the river to the rails but this lack of cooperation on the part of the carriers defeats the very purpose for which the 5 cent rate was pub-

lished. We therefore believe that if the rate as published constitutes discrimination the carriers should be permitted to remove that discrimination and that they either should be permitted to eliminate the application of the reshipping rate in connection with ex-river grain to Chicago or they should be compelled to apply it in connection with the lower rail rates to Chicago and by so doing afford all intermediate markets the same measure of through rates. While it is probably a matter for brief, we believe that there is no reasonable grounds for the application of reshipping rates on this ex-barge grain, having had a movement via cheaper transportation system and when such grain must enter into competition with grain products from sections not adjacent to such systems. If ex-barge grain is accorded the same reshipping rate as ex-rail grain and, as shown in this case, accorded a lower reshipping rate than ex-rail grain, the [fol. 851] only result is to lower the price paid to the producer in territories not so unduly favored. We also believe that as stated by the Commision in ma-y proceedings a reshipping rate is a part of a through rate and, if so, we believe it is a part of a through rate over which the Interstate Commerce Commission can assume entire jurisdiction and not a bclance of a through rate composed of one factor over which the Commission has no supervision and another factor over which it may exercise supervision and regulation. We therefore believe that the application of reshipping rates from Chicago on ex-barge grain is not only illogical from a common sense standpoint but it is, in our opinion, unlawful in that it creates discrimination against competing markets as well as discrimination between firms located in the City of Chicago, as well as violations of the Fourth Section which I have previously mentioned. I offer in evidence exhibit number 22.

Exam. Taylor: It will be received.

(Exhibit 22, Witness Bradford, received in evidence.)

The Witness: That is all I have.

Exam. Taylor: Any questions? Mr. Enoch? Mr. Cole?

By Mr. Cole:

Q. Mr. Bradford, I have just shown you, and you now have before you, exhibit number 6 introduced by Mr. Tannehill?

A. Yes, sir.

Q. Mr. Tannehill on his direct examination stated that these rates via barge, thence the proportional rate to the [fol. 852] east, was lower than the local rates until you got to the point on exhibit 6 which is shown in that solid blue line. Do you notice that solid blue line?

A. Yes, sir.

Exam. Taylor: Is that blue or green?

By Mr. Cole:

Q. Is that blue or green?

A. Green.

Q. All right, that is green. Mr. Bradford, is there much grain produced in that part of Indiana west of that green line?

A. I would say, Mr. Cole, it is the heaviest producing section of Indiana.

Q. What outlet does that grain produced in that part of Indiana west of that green line, what outlet does that grain have?

A. Well, generally it moves either east or to the Ohio River, but there is some movement from the stations in the vicinity of Chicago into Chicago, but the general trend of the movement is to the east or south.

Q. How does that movement divide as between the movement to the east and the movement to the south, would you say?

A. Well, I would say over a period of years that the movement of corn would probably be a little heavier to the Ohio River crossings and to the east. It varies according to the demand. It would be hard to make any definite statement but it does move in both directions in substantial volume.

Q. Do you have with you your figures showing the pro- [fol. 853] duction in this part of Indiana?

A. I don't know whether I have got them or not. I will see.

Q. I know you put them in in several cases.

A. I am sorry, Mr. Cole. I do not have the figures of production with me but I can furnish them if you desire it.

Q. Maybe we can obviate that if you can say, if you can remember how Indiana compared as a grain producer with, say, the other western states where there has been a substantial grain production?

A. Well, I can say that the corn crop of Indiana generally runs better than 129 to 130 million bushels of corn. Now, that is just the last few years. I haven't gone back of that.

Q. How about wheat?

A. And on the wheat production in 1938, I believe eighteen or nineteenth state in wheat production in the United States.

Q. That is sufficient. Thank you, Mr. Bradford.

A. That is, I mean the eighth or ninth state.

Mr. Cole: That is sufficient, thank you.

Exam. Taylor: Is that all you have, Mr. Cole?

Mr. Cole: That is all I have.

Exam. Taylor: Does anybody else have anything?

Mr. Oliphant: Mr. Examiner, I wonder if we couldn't defer further examination until the morning? It is close onto 9:30.

Exam. Taylor: I would like to get rid of him if I can.

The Witness: Off the record.

[fol. 854] (Discussion outside the record.)

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Oliphant:

Q. Mr. Bradford, I believe you stated that you are here in support of the restrictions that are under suspension?

A. Yes, sir.

Q. You further stated that you did not believe there should be given any different treatment to truck grain than to barge grain?

A. I didn't say I didn't think there should. I said I couldn't see any difference in the two movements.

Q. In other words, you believe that if the proportional rates are made applicable to ex-barge grain they should likewise be made applicable to ex-truck grain?

A. I said if they are made applicable on the ex-barge grain that there wasn't any reason why they should not but I am not in favor of making them applicable on either one.

Q. What do you say, then, as to their application on ex-lake grain?

A. Well, I haven't thought very much on that. I think that is an entirely different situation. You have a prior

rail movement up to the lake ports and I can see where the carriers perhaps have more justification for having such a rate on ex-lake grain due to the long haul to Buffalo, but from——

Exam. Taylor: Long haul to Buffalo?

[fol. 855] The Witness: To Buffalo.

Exam. Taylor: I thought you were talking about the rail up to the lake?

The Witness: Well, I talked first about the movement by rail to the lake and then I said that the carriers operating from Chicago perhaps had more reason for a proportional rate on that business than this other business on account of the movement by lake from the head of the lakes to Buffalo but from an abstract proposition, why, I think that the grain should have had an prior rail movement some place. That is the purpose of proportional reshipping rates and it has been so stated by the Commission in a number of cases that I can recall.

By Mr. Oliphant:

Q. Well, Mr. Bradford, you have stated very definitely that you did not believe the proportional rates should be made to apply in connection with any carrier unless that carrier's rates were on file and under the jurisdiction of some body?

A. Well, I will stick to that statement.

Q. Are the lake rates under anybody's jurisdiction?

A. No.

Q. Then what is your opinion as to their application?

A. I just stated my opinion, that I thought perhaps the carriers had more justification for doing it. I would not object to keeping them on the lake rates.

Q. In other words, you don't think it a discrimination to [fol. 856] apply the local rate to the ex-river grain and the proportional rate to the ex-lake grain when the carriers——

A. I didn't say it wasn't a discrimination. I said I wouldn't object to it.

Q. Just a minute. You wouldn't object to it?

A. No.

Q. Why wouldn't you object to it?

A. I said I wouldn't object to the maintenance of the proportional rates on the ex-lake grain because it doesn't hurt me.

Q. Now, you spoke of a prior rail haul on this ex-lake grain?

A. Yes, sir.

Q. Is that essentially necessary to obtain a proportional rate?

A. It isn't essentially necessary but that is what they do. I have spent many, many years in the western grain field and I think I have a practical idea how the grain is hauled out.

Q. But there is grain that is hauled out and that moves on these unfiled rates that does have prior rail movement?

A. Well, I will say this, that the great bulk of the grain that moves to the head of the lakes moves from those western ports in box cars.

Q. Is that a continuous move?

A. No, it is not a continuous move. It goes in store at the head of the lakes just the same as grain goes in store at any terminal market whether it is Chicago, Peoria, St. Louis, Kansas City or any other terminal market. Now, [fol. 857] that brings this thought up to me: The elevator terminal operator in Indianapolis is engaged in exactly the same kind of business that the terminal elevator operator in Chicago that is buying this barge grain. He is buying grain in a country elevator,—he is buying the grain in the country to bring in and store and subsequently ship and he can't do it against this barge rate to Chicago. I am glad you mentioned it.

Q. Now, on this grain that you say might have a prior haul and then moves out of the elevator via the lakes, hasn't that shipment practically lost its identification? In other words, isn't a new billing taken out via the lake carrier?

A. Well, every shipment that goes into any terminal market and goes into store loses its identity as grain. It goes into a mass, it is a fungible mass and there it is.

Q. Except for the fact that you have a transit balance where you have one billing?

A. Yes.

Q. Now, you also made the statement that perhaps the carriers would like to have this ex-lake grain and that is why they don't restrict them?

A. I said perhaps they had more reason for doing it on account of the long haul to Chicago.

Q. By that do you mean that they are applying that 18

cent rate out of Buffalo to New York and forego the hauling of this grain by rail from Chicago?

[fol. 858] A. I didn't say that. I said perhaps they had more reason for paying the reshipping,—for publishing the reshipping rate from Chicago on that grain to secure a haul from Chicago to Buffalo which they otherwise would not secure. Don't get me wrong. You know, I am not boosting the lake business because I am not on the lake but I am just trying to be fair to everybody in this proceeding.

Q. Now, in your exhibit 22, page 4, you spoke of a considerable increase: You show some figures on this page 4 of your exhibit indicating the movement of grain on the Illinois River between Chicago and St. Louis.

A. That is the movement that is shown via the Inland Waterways Corporation.

Q. Do you know how much of that grain would represent the export corn movement in 1937 to New Orleans?

A. No, sir. All I know is the figures were used in the export case to indicate the movement from the Illinois River down to the Mississippi River and on to the Gulf.

Q. So in that case they were attempting to show the movement via the Illinois River to New Orleans and now you are using these figures here and attempting to show the movement via the Illinois River to Chicago?

A. You didn't listen to my testimony. I used these figures to show that there was this movement of grain, this amount of grain moved on the Illinois waterway south and [fol. 859] then the total receipts of the water borne corn at Chicago was so much and the two added together made 18,000,000 bushels of corn that moved on the Illinois waterway in some direction. I did not say that this corn shown as moving via the Inland Waterways Corporation moved to Chicago. I said that it moved, was supposed to move south because that is what was testified about the move in the I. & S. case involving export rates to the Gulf, but I did say that that amount of grain did move on the Inland Waterways Corporation plus the amount shown in the next section, or receipts at Chicago, via the Illinois waterways, indicated the total amount of water borne corn on the Illinois waterways.

Q. Would there be any duplication that you know of in those figures as to north and south bound movement?

A. Yes, sir, I said there may be some. I said in direct that there was.

Q. On page 5 of your exhibit you show a very nice illustration there as to the advantage that the river grain has in rates over the rail rates or combination of rail rates.

A. Yes, sir. I don't say it is nice. It is an advantage.

Q. Well, the exhibit shows a rather nice advantage, I think. What would be the picture if this restriction were permitted to go into effect?

A. If the restriction was permitted to go into effect the barge line grain from Morris to Chicago would pay 34½ cents from Chicago and the rail grain from Morris would [fol. 860] pay 35½ cents to Chicago, Indianapolis or any other gateway there was.

Q. Or a total of 38 cents barge-rail versus 35½ all rail?

A. Well, whatever the barge line rate was in here. I don't know what it would be. I am not sure about this rate except I took it from somebody else.

Q. Well, your exhibit shows that that is the rate you are using.

A. And I said where I got it.

Q. I am using your same figures.

A. All right.

Q. Now, you spoke of points like Sheff and Paris and Greenwood.

A. Glenwood.

Q. Glenwood; and also Indianapolis?

A. Yes, sir.

Q. Are you familiar with the location of Montezuma, Illinois?

A. I know where it is. Right on the Wabash River, right on the bank of the Wabash River, across the Illinois state line, yes, sir. There is a bridge across the river there.

Q. There is no through rail rate on grain from that point to New York, is there?

A. Yes, sir. I had Montezuma, Indiana in mind. I don't know where Montezuma, Illinois is, no. Pardon me just a minute. I will tell you whether there is a through rate from there or not.

Q. Well, I think Mr. Wheat's exhibit page 32 will indicate that and if you are satisfied to take it from that it is all right with me.

[fol. 861] A. I understand there is no through rate from Montezuma and I don't even know where it is.

Q. That point then is quite at a disadvantage with some of these other points shown on that same exhibit?

A. If they haven't got an all rail rate I am not opposed to them having one. I want every point to have it.

Q. Just a minute, Mr. Bradford. This point that I just mentioned is not on any railroad, it doesn't have any rail service. That is stated in the exhibit.

A. I never noticed it in the exhibit. If it doesn't have any railroad I don't know how it can have a rail rate.

Q. Well, I am just citing that point and I want to impress upon you the fact that it has no service by rail. Now, you mentioned these other points, Paris and Sheff and Glenwood and Indianapolis. Do any of those points have any water service?

A. No, sir.

Q. So to that extent they are not disadvantaged against the point that does have water service?

A. Well, Mr. Oliphant, any point that has a water service and can bring grain up to Chicago and send it to New York for 26 cents per 100 pounds against an interior point that is almost over at the Ohio line bringing truck grain in to that point and paying 30 cents is at a disadvantage and it doesn't take a lot of gray matter to figure it out.

Q. Is that any different than the point that does not have [fol. 862] any rail service to any point?

A. The point that hasn't got rail service is just about like a cross-road to me.

Q. It is shown as an important point on the exhibit.

A. I didn't show it in my exhibit.

Q. Well, the record indicates that.

A. I don't admit it is an important point.

Q. Does Indianapolis have the advantage of any water service?

A. I didn't testify about Montezuma. I don't know where it is and I am not going to say anything about it.

Q. Does Indianapolis have the advantage of any water service?

A. No, it does not.

Q. Now, is there any reason why Indianapolis without any water service should have any advantage over any point that does have water service?

A. It doesn't have any advantage over any point. I will say no, that there is no reason that they should have an advantage but it doesn't have any advantage.

Q. But you are asking that the restriction be permitted to go into effect which will place water service at a disadvantage in favor of Indianapolis?

A. I am not placing water service at a disadvantage with Indianapolis. I am removing the disadvantage that Indianapolis is under with a point that has water service and I have shown it by the figures.

[fol. 863] Q. Well, that is a matter of information,—I mean that is a matter of opinion.

A. I admit that and I think I have got the best opinion.

Q. Mr. Bradford, is there any different- in the price of grain at Chicago that is brought in by water and grain brought in by rail?

A. I don't know the prices in Chicago. It has been testified to here by almost every witness that has any knowledge of——

Q. I am asking you if you do know?

A. No, I don't know. All I know is they make different prices for I.P. billing and other billing. That is all I do know about it.

Q. Well, now, if grain reaching Chicago by water and grain reaching there by rail is of the same value what makes the competition out of Chicago?

A. Why, I think the lake is a big competitive factor out of Chicago in connection with this grain that comes in here by barge.

Q. The lake is you say?

A. Yes. It has been testified that about 80 per cent of it moves on the lake.

Q. Well, now, if these restrictions go into effect isn't that going to have a tendency to increase the lake movement?

A. Yes, it will increase the lake movement but it will also put the interior markets, such as Indianapolis and all that, in a better position to handle rail grain as against grain that comes in here by barge and moves out for 26 cents.

[fol. 864] Q. What would you say the effect would be on the points located west of the river?

A. West of what river?

Q. Of the Illinois River.

A. Well, with reference to the rate from Illinois to New York all rail through Indianapolis direct from a country point as compared with combination of the rail rate to Chicago plus the 26 cent reshipping rate,—and you have a barge line rate in there less than that,—we are at a disadvantage.

Q. You say that in the face of the fact that the corn via both modes of transportation at Chicago is of the same value?

A. I didn't say it was the same value. You made that statement; I did not.

Q. Well, is it?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Well, if this lake movement will increase because of the restriction being permitted to go into effect what, in your opinion, have the eastern carriers accomplished by the restriction?

A. I don't think it will increase it a whole lot myself. I think that the——

Q. You just stated it would increase?

A. I did not. I said that it would still be there but I didn't say it would increase.

[fol. 865] Q. I am sorry.

A. I just said that competition was there and that was the controlling competitive factor. Now, that is the question you asked me and that is the answer I gave you.

Q. You don't think, then, that the lake movement would increase?

A. It is hard to tell what it would do. It is all a matter of supply and demand and a pull from the east, whether it would increase or not. There is nobody in this room that can tell what the movement next year will be by box car. I am just telling you what the railroad position is and what the relative position is of the interior market as against the market here.

Q. What effect would it have on Indianapolis?

A. It would have this effect on Indianapolis that we have got to go around and pay 38 cents for grain in Central Illinois and this grain up in Northern Illinois can move in on some unregulated transportation system that nobody knows what the rate is and they pay 26 cents as against a 30 cent rate from Indianapolis and against 34 cents rate from a point 30 miles from Indianapolis, it certainly has a decided bearing on this grain to compete with the Illinois grain. It is simply a matter of dollars and cents.

Q. Mr. Bradford, if it affects the price that way who gets the benefit of that price?

A. I don't know. I read one petition filed and that petition explained that——

[fol. 866] Q. Just a minute. Do you know?

A. Just a minute, I am going to answer your question.

Mr. Oliphant: Just a minute. Mr. Examiner, I asked the witness if he knows and he said he doesn't know.

The Witness: I didn't say any such a thing.

Q. Well, then, do you know?

A. I know probably that goes part of it to the producer and part of it to the consumer. It has been stated in this petition that the people in the Illinois River Valley got the saving and the New England——

Q. Just a minute.

A. Just a minute, I am going to make a statement.

Mr. Oliphant: I am still not interested in what somebody states in a petition. I simply asked Mr. Bradford what he knows about it and he told me. I don't want to know what somebody said in a petition and I am not interested in that. I don't think it will do any good.

Mr. Enoch: I think Mr. Bradford has unfortunately improperly distributed any alleged saving here by confining it wholly to the producer and the consumer. I suspect somebody else gets a large share of that, if any.

Mr. Oliphant: That is all I have.

Exam. Taylor: Any other cross examination?

Mr. Childe: I have some questions.

Exam. Taylor: Go ahead.

[fol. 867] By Mr. Childe:

Q. Do you represent the grain dealers at Indianapolis?

A. Grain dealers, hay dealers, corn millers, flour millers. I represent all the grain, milling and hay industry of the City of Indianapolis.

Q. I understood you to state that Indiana producers a considerable amount of wheat as well as corn?

A. Yes, sir.

Q. Are your members interested in both wheat and corn?

A. Absolutely.

Q. You referred to Morris, Illinois as a representative point of origin on the Illinois River?

A. Yes, sir.

Q. And gave a rate of 4⅛ cents from Morris to Chicago by barge. Just taking that as the correct rate for the purpose of this question, what would the Indianapolis dealer or miller pay to get that corn from Morris to Indianapolis

if he used the barge rate from Morris, if he used the barge route from Morris to Chicago and the rail beyond?

A. Well, if he could do it he would pay the rail rate,—or the barge rate to Chicago plus, I think it is, 11½ cents,—I am not citing that from memory,—but your question is based on the proposition that if he could but he can't do it. It is not practical.

Q. Well, Mr. Bradford——

[fol. 868] A. Just a minute, now. I explained in my direct testimony it is not practical for an elevator operator at Indianapolis to go over to the Illinois River and buy barge loads of grain and bring it up to Chicago, transfer it from the barge at Chicago. He has got to pay somebody in Chicago to do that, and then bring the grain down to Indianapolis and put it in store. He just can't do it.

Q. Well, the exhibits I have before before me indicate that the rate from Chicago to Indianapolis is 12 cents. Will you accept that?

A. Yes. I forgot the increase. I will accept it.

Q. Well, assuming that an Indianapolis receiver forwarded it by barge and rail, the total rate would then be 4⅛ plus 12, or 16⅛ cents, would it not?

A. Yes, sir.

Mr. Wheat: Mr. Examiner, in order that the record may be clear on this, if Mr. Childe is referring to exhibit number 21 he will note that the rate under column B, which he speaks of, will not apply on Illinois River grain. The rates under column A will apply.

The Witness: Thank you. I forgot that.

Mr. Childe: From Chicago?

Mr. Wheat: From Chicago, yes, sir.

Exam. Taylor: What page number is that?

The Witness: Page number 39. The reshipping rate from Chicago to Indianapolis on Illinois billing would be——

[fol. 869] By Mr. Childe:

Q. As I understand it, the rate applicable on ex-barge grain is 14½ cents?

Mr. Wheat: The northwest rates, Mr. Childs on ex-river grain to CFA from Chicago.

By Mr. Childe:

Q. I will be glad to take 14½ for the purpose of my question. Then the two rates would be 14½, plus 4⅛, or 18⅝.

A. Yes, sir.

Exam. Taylor: That is without the loading charges at Chicago?

Mr. Childe: That includes a trimming charge in the 4⅛ cent rate, according to Mr. Bradford's exhibit.

Exam. Taylor: The trimming charge at Chicago or the trimming charge on the barge?

Mr. Childe: At Chicago.

Mr. Enoch: What do you understand by a trimming charge, Mr. Childe?

Mr. Childe: I don't know. I don't want to take up a lot of time on it.

The Witness: I will go ahead with your figures. I think I know what you are getting at.

Mr. Brown: Did you think trimming included the cost of the elevator, putting it into an elevator and then into a car?

Mr. Childe: Mr. Examiner, the hour is getting pretty late.

Mr. Brown: I think it is.

[fol. 870] The Witness: Well, let us get to your question and I will answer it if I can.

By Mr. Childe:

Q. What would be the all rail rate from Morris to Indianapolis?

A. Well, sir, I don't recall but I think it is about 18 cents. I don't know.

Q. Again referring to the exhibits of record I note the figure 21½.

A. That is too high. That is the rate but it is a high rate, too high a rate.

Q. Now, that would be the rate, nevertheless, to Indianapolis that the dealer must pay if he got it all rail from Morris.?

A. Yes, sir.

Q. Now, suppose that that is reshipped beyond, do you have transit arrangements at Indianapolis that would apply?

A. Yes, sir.

Q. Would those transit arrangements likewise apply on the reshipping rate from Chicago assuming that you shipped it on that?

A. Yes, sir.

Q. I believe you volunteered the information in response to one of my questions that an Indianapolis man could not use the barge route from Morris?

A. I said it would be impracticable for him to use it.

Q. Couldn't the Indianapolis man use the public elevator in Chicago?

[fol. 871] A. I think I stated in my direct testimony, Mr. Childe, if you listened, that the small amount of grain that was purchased in this territory that the Indianapolis market did receive was purchased from operators in Chicago and there is some of that grain in Indianapolis today but the fact remains that it forces us to come here to buy the grain.

Q. Well, why couldn't you go to Morris and buy it and ship it by barge and run it through a public elevator and thence by rail to Indianapolis?

A. And pay somebody for transferring it for us up here?

Q. Yes.

A. In the first place, Mr. Childe, I tried to explain that a man in the grain business operating a terminal elevator is in exactly the same kind of business as the gentleman standing behind you that is whispering in your ear, and they go into the country station to buy——

Q. I am not aware of any whispering in my ear but proceed.

A. They go into the country station to buy grain for the purpose of bringing it into that terminal market to store and subsequently ship out when they sell it and they want to have the same privilege of buying grain from the country elevator people that the elevator man in Chicago has and don't want to be forced to come to Chicago to buy the grain.

Q. Well, how about the miller that you represent? Does he have to buy the grain at Chicago if he can get a better deal here?

[fol. 872] A. But the millers do bid considerably,—they buy considerable grain in Chicago but, incidentally, one of the millers, and I think I know who the gentleman whispered

about, was represented on the transportation committee that sent me up here.

Q. And do the millers have to buy the grain in Chicago if they can get it at country prices?

A. Mr. Childe, a miller in Indianapolis would be happy to buy grain at any point where they could get it at a better price.

Q. Well, then, so far as the miller is concerned wouldn't he be able to get a lower delivered rate and, consequently, all his grain at a better price if he went to Morris, shipped it by barge and ran it through a public elevator at Chicago and then reshipped it by rail?

Mr. Enoch: I want to know what barge he is going to ship it by? Are we talking about the Federal Barge or is this man going to move it up here by his barge?

Mr. Childe: I think that is immaterial.

Mr. Enoch: Well, it is not immaterial. I would like for you to explain to the witness what you have in mind.

Mr. Childe: I think the witness understands. I object to the interruption, Mr. Examiner.

Mr. Cole: Why, does it confuse you?

Mr. Childe: I would like to proceed.

Exam. Taylor: Do you understand?

The Witness: He means if the Indianapolis man could [fol. 873] buy a barge and go in business? Why, that would be impractical. But his next question was about buying barge grain in Chicago. I think that was your last question.

By Mr. Childe:

Q. I will restate it.

A. And I will be very glad to answer that question.

Q. I asked you why your Indianapolis millers could not buy the grain at Morris, ship it by barge from Morris to Chicago, run it through a public elevator, send it on the rail reshipping rate from Chicago to Indianapolis?

A. That was four questions back. I answered that one.

Q. I don't think you did.

A. No, your last question was the Indianapolis miller buying grain in Chicago.

Q. Would you mind answering this question I just restated?

A. Why, I answered it once. It would be impracticable for an Indianapolis miller or grain merchant to buy grain

in barge load lots at Morris, Illinois, bring it to Chicago, transfer it, pay somebody to transfer it from the barges to the cars and then ship it down to Indianapolis and put it in store again.

Q. And I asked you why he couldn't do that?

A. For the simple reason it isn't logical to go out and buy that kind of stuff and have the two methods of transportation in getting it to a market.

Q. It isn't logical?

A. It isn't logical, it isn't feasible and it just isn't done.

[fol. 874] Q. All right. Now, will you tell me why he couldn't do it?

A. Well, the main reason he couldn't do it is because he hasn't got the facilities to do it with.

Q. You mean he can't go out to Morris and buy?

A. He can't go out to Morris and buy if he knows what kind of rate he is going to pay and all about it. Probably if Morris would make him a delivered price at Indianapolis he might be able to do it. If Morris would assume all the responsibility of the transportation to New York—to Indianapolis, but until a man knew how much he is going to pay to get this grain to Chicago, how much he is going to pay for transfer, how much he is going to pay to get it down to Indianapolis he couldn't make the deal and I am frank to tell you I don't know how much he would have to pay to get it from Morris to Indianapolis. This 4⅛ cents is a rate that has been put in there by somebody. Now, there has been no testimony that that is the rate that is always there.

Mr. Oliphant: It is in the record that that is the rate that is transporting the traffic. Your exhibit shows that, Mr. Tannehill's exhibit and this exhibit also.

The Witness: Oh, we took the rate from a petition filed here but there has been no testimony yet that that is the rate that moves the business. The only method we had of securing this rate was from the petition filed on your side.

Mr. Enoch: My understanding is that that 4⅛ is a com-[fol. 875] bination of things and it is not a rate at all. You can't find it in any published document.

Mr. Oliphant: The carriers seem to be using it as a rate to portray what the competition is. They are satisfied to use that 4⅛ cent rate.

Mr. Enoch: I will ask you: Will you tell me where you can find it published some place?

Mr. Oliphant: I am not using it as an illustration.

Mr. Enoch: As a matter of courtesy I want to know it.

Mr. Childe: May I proceed?

Exam. Taylor: Yes. Let us cut this cross talk out here and let us go ahead with this witness. Go ahead, Mr. Childe.

By Mr. Childe:

Q. Is it your assumption or understanding that the Indianapolis miller, if he wished to ship by barge from Morris to Chicago, could not get just as good a water rate as any other shipper from Morris to Chicago?

A. I am not making any assumption about it at all. I just say that with regard to the Indianapolis miller, if the Morris elevator operator will bid him a price and assume the transportation, include the transportation charges to Indianapolis in the price and the price is low enough, I will answer that question "Yes." Outside of that I don't know anything else.

Q. Let us assume that he can get via barge the same rate as anybody else from Morris to Chicago and he can get the 12 cent reshipping rate from Chicago to Indianapolis, is [fol. 876] there any reason why it would not be feasible for him to use that?

A. Oh, yes, from a commercial angle going down and buying this barge grain and bringing it in to Chicago and storing it is out of the question.

Q. Wouldn't he be doing the same thing if he purchased it elsewhere?

A. He would purchase a few cars at a time.

Q. Is it your testimony that the Indianapolis merchant cannot buy sufficient quantities at one time if he went by barge?

A. It is my testimony that he doesn't come to Chicago and do it.

Q. I said he couldn't do it?

A. I said he doesn't do it and it is not feasible.

Q. And you are willing to let your answer stand as to why it is not feasible?

A. Yes, sir.

Q. Now, take a grain merchant who you stated would not want to run his grain through an elevator at Chicago,

why wouldn't he if he could get his grain at a lower rate by doing so?

A. Well, in the first place you are basing it on the assumption that he could get it at a lower rate and there is no evidence that he would get it at a lower rate. I don't know what rate he would get it at. You mean if he buys it at Chicago?

Q. I mean if he gets it at a lower rate.

A. Where is he going to buy it?

Q. Well, let us take first the purchase of grain at Morris. [fol. 877] A. Again he would be subject to a transfer cha-ge at Chicago.

Q. Yes. Now, is that your objection on the part of the grain people, that he is forced to pay a transfer charge?

A. I think I made my position clear that the grain merchant at Indianapolis transacts his business in the same manner that the grain merchant in any other market does. He goes out to the country elevator operator to buy his grain. Now, then, if he has got to go to some barge line location on the Illinois River to get the grain rather than in the territory of the Mississippi Valley I will say that that is not a proper or logical marketing situation.

Q. Now, I heard you say that. I am asking you if your objection to it is that it would involve an elevation or transfer charge at Chicago?

A. That is part of it. At least part of it it is.

Q. Even though the total rate including that elevation charge by water and rail was lower than the all rail rate?

A. Now, you are talking about Indianapolis. Now, let us go further. We have got to take this grain out of Indianapolis. Now, when the grain gets to Chicago and goes into one house you have got one transfer charge and then when it gets to Indianapolis you have got another market charge down there, so you are doubling your charges.

Q. Does that state your objection to the use of that?

A. It states part of them but my general objection is that [fol. 878] it cuts out the opportunity for the Indianapolis grain dealer to engage in exactly the same kind of terminal operation that any other operator performs in going out in the country and competing for the grain.

Q. Now, please tell me why the Indianapolis grain merchant could not go out to Morris and bid in on the basis of the barge——

A. I have answered that question.

Q. Wait until I finish.

A. All right.

Q. On the basis of the barge rate from Morris to Chicago, plus the charge for running the grain through a public elevator in Chicago, plus the reshipping rate beyond. Why couldn't he do that?

A. Where is he going to take it after he gets it to Indianapolis? It don't stop there, you know.

Q. All right. You have got the same transit at Indianapolis that you would have if it came in all rail?

A. Then again you have got to furnish a man to go over there to one elevator on the river to buy all the grain in that territory or else buy it at a Chicago house. I say you are killing all the competition in the country.

Q. It all gets down to the point that even though your Indianapolis merchant could get the grain at a lower charge——

A. I don't admit that he would get it a lower charge and, Mr. Childe, there are so many different angles to this thing. [fol. 879] The grain from Indiana and Ohio, they are the places we always compete with.

Mr. Macaulay: Do you know whether it is a fact that this grain did come from Morris to Indianapolis without going through a Chicago house?

The Witness: I never heard of it.

Mr. Macaulay: That is a fact, four years ago.

The Witness: Well, I have been there about eighteen months.

Exam. Taylor: Are you almost through, Mr. Childe?

Mr. Childe: Pretty soon.

Exam. Taylor: Well, please don't repeat questions.

By Mr. Childe:

Q. You spoke about what you consider to be a Fourth Section violation in the operation of the reshipping rates from Chicago on ex-barge grain to the east?

A. Yes, sir.

Q. Would your answer be the same if instead of corn coming by barge to Chicago we take the committee wheat coming by lake to Chicago?

A. I guess it would have to be.

Q. And would it likewise be the same if instead of the commodity corn moving via the Illinois waterway to Chi-

cago I should take the commodity corn moving from a Lake Michigan port by lake to Chicago?

A. I expect it would but there isn't any corn moving that way.

Q. Are you sure of that?

[fol. 880] A. There hasn't been up until just lately. It is not an ordinary movement to move corn over the lake.

Q. Have you ever heard of the commodity corn moving from Green Bay, Wisconsin by lake to Chicago?

A. Not in any appreciable amount except one year.

Q. Assuming there was such a movement would your answer be the same with reference to alleged Fourth Section violation?

A. Well, I guess to be consistent I would have to say "Yes".

Q. You spoke about producers being harmed by the present rate adjustment because they don't get as good a price as if this proposed rate adjustment went in. Did I understand you correctly?

A. What I intended to convey to you, that the producer in the territory that does not have the benefit of this rate is harmed because if you set the value of this corn at Chicago on a 26 cent rate with no billing back of it but the producer in another territory that is closer to the market has to pay 34½ cents, you have got to bring down the price you pay that producer to meet this situation up here. That is just another problem in arithmetic.

Q. Are you saying that if the proposed rate adjustment goes in the price of corn at Chicago would be lower?

A. I am saying that the rate on rail corn from Chicago would be the same or more.

Q. I am not talking about rate. I am talking about the price.

[fol. 881] Mr. Enoch: I think the witness is going to answer his question.

The Witness: I am assuming that the price of rail corn may be different in Chicago than it is on this barge line corn but it would level off with the prices paid to the producers in other sections and that brings out the very discrimination that I am talking about, that it tends to lower the prices in the other section. There is your public interest.

By Mr. Childe:

Q. You mean that if the price of rail corn goes down in Chicago that a producer in some other section of Illinois that ships by rail to Chicago would get a higher price? I thought you said he would get a lower price.

A. Not ships to Chicago. I am talking about the shipper that ships to Indianapolis from the interior market, where the Chicago corn pays 26 cents regardless of whether it had a prior rail transportation or not and the corn at an intermediate point that hadn't any prior rail transportation pays 34½ and it is nearer to New York.

Q. You said the Indianapolis grain merchant could not compete with the Chicago prices today, did you not?

A. I said that he could not compete unless he lowered the price sufficient in the country to compete with it. That is what I meant. We are selling corn but we are not buying any corn in northern Illinois to sell.

Q. If the Chicago price is not changed how is the [fol. 882] Indianapolis grain dealer going to be better able to compete than he is today?

A. The *The* Chicago corn price on rail corn probably will be changed to the level that the Indianapolis man can probably go out in the country and ship it by rail. If he cannot then he is out.

Q. In that event every producer that ships corn to Chicago under your assumption would get a lower price?

A. Oh, not every producer. I am talking about this territory adjacent to the Illinois waterway. I said every producer shipping to Chicago.

Q. Didn't you say that the rail price on corn shipped to Chicago would drop?

A. No, from the Illinois waterway territory.

Q. Do you mean to say that the Chicago Board of Trade or the Chicago grain dealer would pay a lower price on rail corn which came in from one part of Illinois than he would pay on the rail corn that came from another part?

A. He would probably pay the same prices on rail corn.

Q. Wouldn't the price at Chicago be just the same?

A. The price in Chicago might be the same but the price in the country might vary.

Mr. Childe: That is all.

Exam. Taylor: Any more questions from this witness?

Mr. Oliphant: Mr. Examiner, I understand, if you will

[fol. 883] permit an interruption,—I don't like to insist but I understand there is some more cross examination of this witness.

Exam. Taylor: We will adjourn until nine o'clock tomorrow morning.

(Whereupon, at 10:05 o'clock p. m., the hearing was adjourned until 9:00 o'clock a. m., Thursday, December 21, 1939.)

[fol. 884] Chicago, Illinois,
Thursday, December 21, 1939.

Before R. G. Taylor, Examiner

Hearing Resumed at 9:00 O'clock A. M.

Appearances: As heretofore noted.

Exam. Taylor: All right, gentlemen, let's come to order. Now we will proceed with the cross examination of Mr. Bradford, but we are not going to allow the same question asked over twice from here on out. Proceed.

Any further cross examination of this witness?

FREEMAN BRADFORD, resumed:

Cross-examination (Cont'd.)

By Mr. Root:

Q. Mr. Bradford, you mentioned that the Indianapolis Board of Trade was losing certain business from the Illinois River Valley?

A. I think I said, Mr. Root, that the business that we drew from the Illinois River Valley had practically fallen off to nothing.

Q. That means you are not getting it any more?

A. That means we are not getting it.

Q. Do you know to what market that grain is being shipped?

A. I don't know all the markets, but I know it is coming to [fol. 885] Chicago. They have told me that the grain is moving to Chicago, due to truck movement, waterway movement, and intrastate rates. That is, all three reasons.

Q. And in all probability, it is sold through the Chicago Board of Trade?

A. I don't know who sold it. All I know, it is moving to Chicago.

Mr. Root: That is all.

Exam. Taylor: Mr. Belnap, have you anything?

Mr. Belnap: I have nothing.

Exam. Taylor: Is that all from this witness? Anything on redirect? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: Next witness.

Mr. Enoch: I guess that is all.

Exam. Taylor: I thought you had somebody else, Mr. Brown.

Off the record.

(Discussion outside the record.)

Mr. Root: Mr. Barclay, please.

WILLARD BARCLAY, was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please, Mr. Barclay?

A. Willard Barclay.

Q. And your residence?

A. Wing, Illinois.

[fol. 886] Q. What is your business or occupation, Mr. Barclay?

A. Grain dealer; manager of the Valley Grain Company at Wing.

Q. You prepared a statement which you would like to make in connection with this matter, in order to expedite the hearing?

A. Well, in a way, yes.

Q. Do you want to make that statement?

A. Yes, I think it would save time.

Q. I would like to get away, if possible.

A. My name is Willard Barclay; age 56. I have been in the grain business for 22 years.

Q. Speak up, Mr. Barclay.

A. I live at Wing, Illinois, Livingston County; have managed the Valley Grain Company there for the last 16 years. Wing is approximately 38 miles from Morris, Illinois.

About four years -go, we began losing our business; itinerant truckers began sapping our business by trucking it out. We are not a stockholder or in any way connected with the Cooperative Allied Grain Dealers Corporation of Morris, Illinois. These itinerant truckers took approximately 25,000 bushels of corn and oats from us for the years of 1937 and 1938, extending into 1939. Self preservation comes first, so we set to work to find a market where we could arrest our competition from the itinerant truckers.

Sometime early in the year 1937, I made a trip to Morris to confer with a Mr. Watt, then manager of the Farmers [fol. 887] National Grain Dealers Corporation. There I learned we could truck our grain to Morris.

By Mr. Enoch:

Q. I can't hear. That you could what?

A. We could truck our grain to Morris to them and meet our competition by itinerant truckers and still get our usual margin for handling grain. By this hook-up, we were not only able to give the producer more money for his grain, but have been able to get most of our lost business back.

We figure the farmer is receiving approximately 1 cent more per bushel for his corn and approximately a cent and a half a bushel more for his beans than we could give him and ship over the rails. We buy over an approximate area of four miles west, two and a half north, two and a half south, and three and a half miles east of Wing. Our yearly business ranges from 200,000 to 250,000 bushels per year, the range caused by seasons and the farmers present farm program of reduction in acreage. All through September, October and November of 1939, we could get approximately 1½ cents a bushel more for beans, 1 cent more a bushel for corn by way of Morris than we could over the rails, which is passed on to the farmer and helped our annual turnover in bushels, in getting our business back.

Now, we have some specific examples set forth here.

Q. (You have got some what?-

A. Some specific examples. On November 29, 1939, we were bid 47 cents net our track for No. 2 yellow corn. Mor-
[fol. 888] ris bid us 48 cents net our station for the same corn.

By Mr. Bradford:

Q. Pardon me, just a minute. That 47 cent bid was from whom?

A. That is the rails, which we could receive from the rails.

[fol. 889] Q. Who did you receive the bid from?

A. Balbach.

Q. That is Chicago?

A. Chicago bids, which was the best we could receive at that time, while Morris gave us a bid of 48 cents net our station, so we were able to buy this corn of Roy Lee, 700 bushels of it, a man who had otherwise been selling by itinerant truckers, and one we had lost previously. The result was we bought this grain and got a reasonable margin on it and brought our business back.

On June 28th, 1939, a man by the name of Frank Gingrich, four miles southeast of Wing, who had been a persistent seller to itinerant truckers, came into our office and made us an offer which was one cent under the rails—or one cent over.

By Mr. Root:

Q. What was that now, one cent under or over?

A. That is one cent over what we could get and pay for it by shipping it over the rails. I called the Co-Operative Allied Grain Dealers at Morris, who gave me at once a bid of a cent and a quarter more.

Q. More than what?

A. More for the corn?

By Mr. Bradford:

Q. That is one and a fourth cents over this one cent, which would make it two and a fourth?

A. Let's clarify that.

[fol. 890] By Mr. Root:

Q. I wish you would.

A. In the first place, we were offered this corn at a cent

a bushel more than I could actually bid if I bought it and put it over the rails and give myself a margin commensurate with the business we have, so I phoned the Co-Operative Allied Grain Company at Morris, who gave me a bid of a cent and a quarter more.

By Exam. Taylor:

Q. More than what?
A. More than the previous bid.
Q. Let me take it this way:
A. Yes.
Q. We will say that your margin was 46 and this man gave you a cent over, that making 47. Did Morris make it 48½?
A. Yes, that would be along the line—I unfortunately haven't put that price down in this particular instance. I have in some that follow. The result was we bought this corn, put it through our plant, got our regular margin and saved that business for ourselves. Now, on June 8th,——

By Mr. Brown:

Q. Just before you go on, when you say you put it through your plant, what did you do with it after you put it through your plant?

Mr. Root: Mr. Brown,—pardon me. Mr. Examiner, don't you believe that is a matter for cross examination?
Mr. Brown: No, but I want to follow along. He said he bought this corn and put it through his plant.
[fol. 891] Exam. Taylor: That is just explanatory of what he meant by it. He can state it.

By Mr. Brown:

Q. Where did you put it through?
A. This particular job, we took the trucks direct to the farmer's crib and hauled it direct to Morris, put it through our books.
Q. You didn't actually put it through your elevator?
A. Not this one.

Mr. Brown: The inference was that you did.
Mr. Root: We are going to develop all that, Mr. Brown. There isn't any secret about that.

Mr. Brown: I know there isn't but we want to understand it.

Exam. Taylor: Proceed.

The Witness: On June 8th, 1939, Matt Lewis, living four and a half miles west of Wing, came into our office and asked the price of white corn.

Mr. Enoch: May I interrupt there. I would like to suggest this: it seems to me that it can be done with much greater propriety if he would tell what the business was and what they finally paid for the grain and let the Commission draw any conclusions that should be drawn from that testimony as to whether they paid more for it or less for it.

Mr. Root: Mr. Enoch, if you want a copy of this man's statement, I will give it to you and it has got that in it.

[fol. 892] Mr. Enoch: Then we are just wasting time with the forepart of it.

By Exam. Taylor:

Q. Can't you line your testimony up——

A. That last one in regard to Frank Gingrich is the only one I haven't the prices set down. The rest have them.

Exam. Taylor: All right, proceed.

The Witness: Asked us the price on white corn. We bid him fifty and a half cents per bushel and explained we would bring the trucks to his farm and save the cost of transportation to Wing, which would save him a cost of a cent a bushel. This man had been selling to itinerant truckers. We bought this corn for one cent per bushel more than he was otherwise bid, on top of saving him one cent per bushel for the transportation into Wing.

Mr. Enoch: I move to strike that out because I don't this this witness is in a position to tell all the bids that this other man got.

Mr. Root: I didn't hear that objection.

Exam. Taylor: You can cross examine him on that, Mr. Enoch, when you come to it.

Mr. Enoch: It is all in the record.

The Witness: I can correct that now. That man was paid forty-nine and a half when he came into my office.

Exam. Taylor: Proceed.

The Witness: This man had 2081 bushels of white corn.

[fol. 893] The result was, we bought this corn, got us our margin, our regular margin, saved the business. Mr.

Lewis got a cent a bushel more for his corn and saved him the cost of transportation to Wing in this transaction.

On November 20th, 1939, Gordon Wrey, living three miles northeast of Wing, who had frequently sold to outside bidders, truckers, came into our office and stated he could get 42 cents for his corn. Upon phoning to the Co-Operative Allied Grain Dealers Corporation at Morris, we were able to give him 43 cents for it, take the trucks to his farm, save him the cost of transportation to the elevator. The result was we bought 1,704 bushels which would otherwise be straying away from us.

By Exam. Taylor:

Q. You said the cost of grain to the elevator. Which elevator were you talking about?

A. Well, it usually costs—it costs approximately, in our area, three quarters of a cent to truck grain into our plant.

Q. Was that trucked into your plant?

A. No.

Q. It went right to Morris?

A. It was taken directly to Morris by trucks from the farm.

Q. Proceed.

A. We firmly believe that the market at Morris has not only saved money for our clients but it has enabled us to build up our business and recover a large portion of that which had strayed away from us in previous years. That is all .

[fol. 894] Q. Is that all you have?

A. Yes, sir.

Exam. Taylor: Any questions?

By Mr. Root:

Q. You have a statement in your example of November 20th, 1939.

Exam. Taylor: He gave that, I think. That was the last one he gave.

The Witness: That was the last one.

By Mr. Root:

Q. You missed the one on Larkin Pool on October 28th, didn't you?

A. Yes.

Q. Do you care to give that to the record?

A. Well, there was an objection made here.

Q. All right, you proceed on it.

A. All right. A man travelling through the country offered Larkin Pool a cent and a half a bushel more for his beans than I could give and put them over the rails.

Mr. Enoch: I think that kind of testimony ought not to be received. Obviously, it is based on what somebody told this witness.

Mr. Belnap: Mr. Examiner, on the respondent's side of the case, all day yesterday we had people testify that Morris bid more, half a cent to a cent and we didn't object to that.

Mr. Enoch: I don't believe you heard my objection here. I don't believe we ought to receive a lot of this type of [fol. 895] hearsay testimony.

Mr. Belnap: If that is hearsay, we have been receiving hearsay. If the man said he had a bid——

Mr. Enoch: Mr. Belnap does not understand, apparently he didn't hear this man's statement. He isn't talking very loud. The man said somebody else was bid so much for grain. Unless he is following that man around twenty four hours a day for months at a time, he isn't going to know how much that man was bid for grain except what that man told him. That is my objection.

Exam. Taylor: In any event, Mr. Belnap, you know that if there is an objection to hearsay evidence, we sustain the objection.

Mr. Belnap: That is correct, sir, but you have a man in the grain business who is competing in the purchase of grain, who is telling that from a particular producer, he was able to offer a certain amount, dependent upon whether he shipped to the river or to the rail. Now, it is his business to find out what his competition is, how much he has to bid. I think that would be perfectly proper to have it.

Exam. Taylor: If he puts it in the form you state it, that would be all right; but he didn't put it that way.

Mr. Belnap: I understood that was the way he was putting it in.

Exam. Taylor: Maybe you can straighten him out on it.

[fol. 896] By Mr. Root:

Q. Mr. Barclay, how much did Larkin Pool offer to sell you that corn with relation to your rail bid?

A. It was beans, Mr. Root.

Q. Or beans, with relation to the rail bid that you had had on beans that day?

A. We had a bid on the board that was approximately one and a half under, which was a rail bid.

Q. And his was a cent and a half over, is that right?

A. Yes, sir.

Q. Well, just proceed and tell what happened in the Larkin Pool deal from that point.

A. Well, we hated to lose this business because it had been going to an itinerant trucker and an itinerant trucker had made this bid. I called the Co-Operative Allied Grain Dealers Association of Morris and received a bid whereby I could beat that competition, and they sold me the beans in preference to selling them to the itinerant trucker, as a result. I forget how many bushels we received.

Q. 1,900 bushels, is that it?

A. 1,900 bushels.

Q. Now, on or about October 18, 1939, did you have a transaction with one Ed Hunt down there?

A. That is Ed Haab, H-a-a-b.

Q. Whoever it was?

A. I did.

[fol. 897] Mr. Enoch: Is that the same day, October 29th?

Mr. Root: No, October 11th.

Mr. Enoch: 11th. Pardon me.

By Mr. Root:

Q. Will you describe that transaction.

A. He came into my office and stated he could receive one cent per bushel more than I had marked on the board for corn, which was a rail bid. I called up Co-Operative Allied Grain Dealers of Morris and promptly received a bid whereby I could buy that corn by giving him one cent more than I was bidding, which was a rail bid.

By Exam. Taylor:

Q. What was the amount of the bid, do you recall?

A. I can't recall that bid, sir.

By Mr. Root:

Q. Do you have that figure with you?

A. I didn't know it was going to be this technical or it could have been put down. No.

Q. What was that bid with relation to the rail bid?

A. Well, the bid I finally made him in order to buy the corn was one cent more than we could bid going over the rails and still retain our margin of profit.

Q. Now, in that case were you also able to save Mr. Hunt, whatever his name is——

A. Haab, H-a-a-b.

Q. Haab?

A. Haab.

[fol. 898] Q. The expense of a—some expense of hauling on his corn?

A. Eight-tenths cents on a bushel or 80 cents a hundred it cost him to transport it into our plant at Wing.

Q. So the net benefit to him was 1.8 cents per bushel more than he would have had over the rail?

By Exam. Taylor:

Q. But you didn't take it into your plant?

A. No, we took the trucks direct to——

Q. What saving was there in that?

A. He didn't have to transport it to Wing. I paid the transportation.

Q. You said it was 80 cents a hundred to your plant at Wing. What would it be to the plant at Morris?

Mr. Root: Pardon me, Mr. Examiner; let me ask this question:

By Mr. Root:

Q. Are all of your bids F. O. B. the farm?

A. No, it is F. O. B. Wing, on track, Chicago.

Q. Pardon me, the bids you put out like when you bid this man for this particular job lot, where was this bid made, on his farm or in Wing or Morris or where?

A. In the conversation, I told him that if I was able to buy it and sell it to Morris, I could bring the trucks directly to his farm, take his corn direct to Morris, which would save him the cost of transportation into our plant or any other plant.

Q. As far as he was concerned, the bid was on his farm and he didn't have to move the corn at all, is that correct?
[fol. 899] A. Yes, that is true.
Q. Now, Mr. Barclay, have you had other transactions similar to the ones that you specifically mention here?
A. Too numerous to mention.

Mr. Enoch: Similar to which one?
Mr. Root: To these several specific examples.
Mr. Enoch: Are these all similar?
Mr. Root: Well, yes, sure, they are all similar.
Mr. Bradford: Now, just a minute, Mr. Examiner. I don't think they are similar because some of these examples were where he had been selling and got bids from itinerant truckers and others were rail shipments. I don't think they are similar.
Exam. Taylor: That will be a matter for the Commission and argument.

By Mr. Root:

Q. Mr. Barclay, let me ask you just one question: on this grain which you shipped to Morris, what is the reason that you have had it trucked to Morris and shipped by water rather than shipping it out of Wing by rail?
A. Well, there is two reasons. In the first instance, the average farmer in our community hires his corn trucked to our plant, which averages 75 cents a hundred bushels from all the territory we draw. Some is less——
Q. That is, when it comes into your plant in Wing, it is 75 cents?
A. Yes. Now, we are able to hire this corn trucked to [fol. 900] Morris and take these trucks directly to a farmer's crib and direct to Morris, saving him that cost of transportation.

By Mr. Day:

Q. What is that cost? That is what the Examiner asked you.
The Witness: Do you want to know that cost?
Exam. Taylor: I do.
The Witness: It averages two and a half cents a bushel at my house from Wing to Morris.

By Exam. Taylor:

Q. From Wing to Morris?
A. Yes, sir.

By Mr. Day:

Q. Or from the farm to Morris?
A. To Wing and vicinity. Whenever they come to my plant with grain; it might be south, it might be east, it might be west or north. The rate I pay is two and a half cents a bushel.

By Mr. Day:

Q. From the farm to Morris?
A. Yes, sir. Two and a half cents a bushel.

Exam. Taylor: Is that all?
Mr. Root: No, I believe he has answered only half of that question.

By Mr. Root:

Q. My question was, why have you sold grain to this Co-Operative Allied Grain Dealers Corporation at Morris and trucked it in in preference to rail? You said there were two reasons and you gave one reason.
A. The last reason is the most important. I can get more money for it.
[fol. 901] Q. More money for the grain you sell?
A. Yes, sir.

Mr. Root: That is all.
Exam. Taylor: Any questions by counsel for protestants? (No response.) Cross-examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Barclay, is it your impression that something we are trying to do now will definitely affect the price that you will be able to get for your produce sold at Morris and move it up the waterway to Chicago?
Mr. Belnap: May I have that read? The phone rang right in the middle of it.

(Question read.)

The Witness: Well, I will answer you a good deal like Mr. Hayes did last night. This rate question is a lot of stuff that I don't——

Mr. Belnap: I can't hear the witness, please.

The Witness: I say I am going to answer this gentleman like a witness did last night. The rate question to me is—I don't understand it. I don't know much about it. I do know that when I can get a bid from a broker by rails and when I get a bid from the Co-Operative Allied Grain Dealers Association at Morris or waterway; if it is more money, I accept it.

By Mr. Cole:

Q. And Mr. Barclay, if in the future, no matter what we do, if in the future you would still have available that [fol. 902] waterway—because we don't threaten to dry it up—and transportation over that waterway was still cheaper, and if the Morris elevator is still in operation and if you can still sell your grain down at the Morris elevator and make some use of that cheaper transportation via water, what do you see in this situation that you fear sufficiently to come here and tell us of your worries? What is it that you fear?

A. I haven't any fears.

Mr. Belnap: Mr. Examiner, may I make an objection?

Exam. Taylor: Yes.

Mr. Belnap: This witness, to my mind, is a normal function witness coming here, presenting facts. I don't understand he has presented argument as to what will follow or what won't follow anything; and your asking him to argue about anything is clearly beyond the limitations of his direct examination, and I object to that type of question.

Mr. Cole: Mr. Examiner, all I have asked this witness for is what is the fear in the back of his mind, why is he——

Exam. Taylor: We won't argue about it. The witness may answer if he knows.

Mr. Cole: Thank you.

The Witness: I am just answering on past performance. I have no idea what is in the future here as a result of this hearing.

By Mr. Cole:

Q. Do you understand the issue as that we are here con-
[fol. 903] fronted with?
A. I am not sure that I do.

Mr. Cole: That is all. Thank you, Mr. Barclay.

By Mr. Day:

Q. You said that you make more money when you are able to arrange the sale of grain from the farm to the elevator at Morris. What is your commission in the case of that kind?
A. Well, we try to get 2 cents a bushel for our commission.
Q. And what do you get where you handle it through your own elevator?

Mr. Root: Will you repeat that question, please?

(Question read.)

The Witness: If we have to meet the competition which we have been up against, oftentimes we didn't get a cent a bushel.

By Mr. Day:

Q. Now, what is the answer? What are you currently getting where you handle corn through your own elevator and it is moved out by rail?

Mr. Belnap: I can't hear Mr. Day, Mr. Examiner. May I have that question read?
Mr. Day: Mr. Examiner—off the record.
Exam. Taylor: Yes, off the record.

(Discussion outside the record.)

The Witness: I haven't handled very much corn through our plant for quite a while, since——

[fol. 904] By Mr. Day:

Q. How long?
A. Oh, it is all fall; ever since—well, we will say early July. I have put practically everything to the waterway at Morris.
Q. You haven't handled anything through your elevator?
A. We handled some oats.

Q. But no corn?

A. Very—possibly two cars.

Q. How long ago?

A. I would have to look at my records for that; in that interim.

Q. In these two cars of corn that you have handled since July, what did you get on those as your compensation?

A. Now, I would have to go to my records and see. Now, understand, the collection of those two cars was the odds and ends of full truck loads to Morris that was brought into the plant at Wing; say 50 bushels or over.

Q. It wasn't a carload shipment?

A. It was a collection, after we collect up a thousand bushels or better.

Q. Can you tell us what you got on that thousand bushels?

A. I can't without going to my records. There is a variation of prices.

Q. What is the variation?

A. Some of this corn was bought as low as 40 cents and some of it was bought as high as 46, 47. It is the odds [fol. 905] and ends of those bushels.

Q. I know that has been approximately the range of prices since early summer, but what I am trying to find out from you is, what did you get out of it?

A. I can't tell you without going to the books.

Q. You said there has been a variation. Can you tell us the range of that variation?

A. I have explained that it was maybe the first job we bought that went to Morris, we had 50 bushels over that come into the plant.

Q. You told me what you got that went to Morris.

Mr. Root: He is explaining it. Let him answer.

By Mr. Day:

Q. Let's stick to this business that you handle in your own elevator and is shipped out by rail, because, as I understand it, your elevator is simply a rail facility?

A. Yes.

Mr. Root: Let him explain.

Mr. Day: I don't want him to explain anything about the barge grain. I have got the answer on that. My question deals with the grain handled through his elevator. He

doesn't have to spar with me about that and he doesn't need any help from you. Just answer the question.

Exam. Taylor: Mr. Root, Mr. Day has the witness on cross-examination.

The Witness: Inasmuch as that is odds and ends, it [fol. 905a] might be bought all the way from 40 to 47, and when the accumulation reached a carload, the possibilities are I got a pretty fair margin on that.

By Mr. Day:

Q. How much?
A. I couldn't say.
Q. Was it a cent?
A. I couldn't say without going to my records.
Q. Was it three cents?
[fol. 906] A. If we could have taken it to the river at the time, we would have taken it there, because we make a practice of selling as soon as we buy. We are not gamblers on grain.
Q. Was it 3 cents?
A. I couldn't say.
Q. You couldn't say?
A. No.
Q. Then why did you make the positive statement on direct that you were getting more where it was handled through the river when you don't know what you get when it was handled through your elevator by rail?
A. These are all daily transactions that involve carload lots.
Q. What is the answer, do you get less or more?
A. I couldn't tell you without my records.
Q. You don't know?
A. I couldn't tell you without going through my records.

Mr. Belnap: I can't hear the witness.
The Witness: I haven't those records with me.

By Mr. Day:

Q. You want to change your previous answer, then, that you get more where it is barged?
A. No, I don't want to change that answer.
Q. You still want it to stand that you got more?
A. On daily business bids, we get more to Morris.

Q. What do you get on daily business bids where it is handled through your elevator?

[fol. 907] A. We haven't done any of the business for so long. We sell practically everything to Morris, which probably you will get some information on later.

Q. Is your elevator standing idle now?

A. Not exactly. We are in the grain and lumber and coal business.

Q. I know, but you don't put coal and lumber through your elevator?

A. Oh, no.

Mr. Day: The answer is "no," Miss Reporter. He is shaking his head.

The Witness: We handle some oats through that plant.

By Mr. Day:

Q. How much?

A. Well, up to the present time, from our fiscal year, which began July 1st, approximately 13,000 bushels.

Q. How much since July?

A. I said July 1st, which is the beginning of our fiscal year, up to the present time.

Q. Was that this year's crop of oats?

A. Most of them were, yes.

Q. Most of it was?

A. Yes.

Q. Do you know what you got on the oats when you handled it?

A. Our aim was to get two cents a bushel.

Q. The same as on the barge grain?

[fol. 908] A. We seldom sell oats to the river; beans and corn.

Q. Isn't oats desirable to the river handlers?

A. Our bids are not so good on oats.

Q. That is because oats are bulky and only weigh 32 pounds to the bushel, isn't it?

A. That I am unable to say. I don't know how they base their bids.

Q. But it is all right for the railroads to handle this commodity that isn't so favorable from a transportation standpoint?

Mr. Belnap: I object to that. He hasn't said anything was favorable from a transportation standpoint, Mr. Examiner.

By Mr. Day:

Q. Is it a fact that oats weigh 32 pounds to the bushel?

A. Yes, sir.

Q. Isn't it a fact that corn weighs from 56 to 72 pounds per bushel?

A. I believe the standard weight is 56.

Q. Is it 72 pounds for ear corn?

A. We don't handle ear corn. It should be 70 at this time of the year.

Q. 70?

A. At this time of the year.

Q. Where did these itinerant truckers that you spoke about haul the grain to?

A. Well, they would come in there from Ohio.

[fol. 909] Q. I don't want to know where they come from. I want to know where they haul it to. Don't spar with me and don't try to evade my questions. That is a clear question and you can answer it plainly. Where does the grain go to when they get it?

A. I don't know because I don't sell to them.

Q. You don't know?

A. I don't sell to them.

Q. Now, this man that was able to sell 22,000-odd bushels of corn off his farm, how big a farm has he got?

A. I never made that statement.

Mr. Root: 2,200 not 22,000.

Mr. Day: I understood him to say 22,000.

By Mr. Day:

Q. You said 2,200?

A. I don't think that is the statement.

Q. Well, what is it? What is the statement?

Mr. Root: Which one are you asking about now?

The Witness: Which one? There is a number of examples.

By Mr. Day:

Q. The gentleman's name was Lewis, if that helps you any.

A. Matt Lewis.

Mr. Root: 2,081.

Mr. Day: Just a moment, please; let's have it from the witness. If he wants any prompting from you, I suppose he will ask you.

Mr. Belnap: Have we an entire change in deal, Mr. Examiner?

[fol. 910] I heard all that yesterday; Mr. Day and Mr. Enoch and Mr. Brown getting up and making statements.

By Mr. Day:

Q. Now, will you consult your memorandum and tell us what the figure was? You say you don't think it was 2,200-odd bushels.

A. You said 22,000.

Q. I said that, then someone over here said 2,200 and you said you didn't think that was the figure.

A. It isn't. It is 2,081 bushels.

Q. 2,081?

A. Yes, sir.

Q. Is Mr. Lewis actually a grower of corn?

A. Yes, sir, farmer.

Q. Are all of these other parties from whom you purchased the corn for the canal operators also farmers—are they all farmers?

A. Yes, sir.

Mr. Root: May I have that question?

Exam. Taylor: Read the question, Miss Reporter, please.

(Question read.)

By Mr. Day:

Q. Are they engaged in any other business, like selling grain?

A. Not that I know of.

Q. As far as you know, they are engaged exclusively in farming?

A. Yes, sir.

[fol. 911] Q. Now, when you arrange for the hauling of corn by truck from these farms to the river, do you use your own trucks?

A. No, sir.

Q. You hire that done?

A. We hire it done.

Q. Truckers around Wing?

A. We have men who own fleets of trucks that do that business exclusively, practically.

Exam. Taylor: Mr. Witness, everybody in the room wants to hear you; we all want to hear you. I am sure you can talk up a little louder than that.

By Mr. Day:

Q. Are these people operating trucks engaged in the trucking business?

A. Yes, sir.

Q. Not in the grain business, or not in any side lines?

A. The men I use are exclusively in the trucking business.

Q. What is their name?

A. One of them is Carl Dickson.

Q. At Wing?

A. He is from Saunemin. Then we have George Stacey of Dwight that we use, and we have another firm up there that has a number of trucks, by the name of Niesen.

Q. They do substantially all of your hauling?

A. Yes, sir.

Q. And you arrange for that transportation from the [fol. 912] farm to the river?

A. Yes, sir.

Q. Do these same haulers take the grain—would they take the grain in from the farm to your elevator in the event that you saw fit to move it through your own elevator?

A. Yes, sir, but I would have to pay them.

Mr. Root: What was that answer? I didn't hear it.

(Answer read.)

Mr. Day: That is all I have, thank you.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. On this grain that moved from the farm to the river elevator at Morris, do you buy the grain from the farmer and sell it to the Allied Co-operative, or do you simply conduct that business for the Allied Co-operative at Morris?

A. I buy that for the Valley Grain Company and sell it to the Co-operative Allied Grain Company at Morris.

Q. So you pay the transportation cost from the farm to the river elevator?

A. Yes, sir.

Q. And your dealings in respect to the transportation of that grain by truck are conducted in your behalf?

A. Yes, sir.

Q. Do you get any bids from those river elevators for oats?

Mr. Root: I didn't hear that last word.

By Mr. Enoch:

Q. Do you get any bids from those river elevators for [fol. 913] oats?

A. Yes, sir.

Q. Have you had any since the 1st of July?

A. Every day, practically.

Q. From the Allied Co-operative?

A. Yes, sir.

Q. Could you give me any of those bids and the time they were made?

A. I don't recall—let me tell you one of the reasons why I don't put oats up to the Co-operative Allied Grain Dealers.

Q. Why not?

A. Our oats this year are of a very bad quality. Sometimes they will come in there, two loads that will weigh 26 pounds and they will be musty, and the next two loads will be 28, 29 pounds, dark and musty, and those oats really have no grade, so we consign them to Chicago and let them sell on the merits. That is one of the reasons.

Q. What was the quality of oats last year in the territory?

A. Very good.

Q. Did you sell them to the Allied last year?

A. No.

Q. Why was that?

Mr. Day: He shakes his head; the reporter doesn't hear that.

The Witness: Well, their bids are not so good on oats.

[fol. 914] By Mr. Enoch:

Q. They are not as good as the rail bid?

A. No.

Q. You are on the Wabash?

A. Yes, sir.

Q. Do you think that railroad ought to continue to handle oats out of Wing and let the barge take the corn?

A. Well, that is up to them.

Q. Do your oats find their natural market in Chicago?

A. I have no way of telling what happens to them.

Q. To whom do you sell oats?

A. The oats have principally been sold to Paul Balbach at Pontiac. He runs Winthrop-Mitchells.

Q. Do they move by rail to Chicago?

A. Yes.

Q. Then Chicago is the market as far as you are concerned and as far as you know, is it not?

By Exam. Taylor:

Q. Did you answer that?

A. It would be on oats, but it isn't as good a market as corn—on corn.

By Mr. Enoch:

Q. Now, take your paper that you had in front of you on direct and refer to the date of November 2nd, where you bought some corn, and tell me in cents per bushel how much you paid for that corn and to whom.

A. I don't think I made any testimony along that line.

Q. Have you got the date? Is the date right, November [fol. 915] 2nd? The first date you gave; first transaction.

A. This is November 29th.

Q. November 29th. All right. How much did you pay for that grain and to whom? Can you give me the cents per bushel?

A. This particular job, we paid 46 cents.

Q. 46 cents. To whom?

A. Just a minute until I see. This was a Morris bid, Roy Lee.

Q. Roy Lee?

A. Just a minute, now, Yes, Roy Lee.

Q. Was that net to him on the farm?

A. Yes, sir.
Q. He bore no transportation cost on that?
A. No, sir.
Q. Now, on June 28, 1939, is that the next date?
A. Yes, sir.
Q. How much did you pay for the corn on that day and to whom did you pay it?
Mr. Root: I beg your pardon; would you read that question for me? The telephone rang.

(Question read.)

Mr. Root: On what day?
The Witness: I haven't that price set down in here and it is the only one that I don't have.

By Mr. Enoch:

Q. June 8, 1939. Can you give me the same information for that date?
[fol. 916] A. We paid the farmer 50½ cents per bushel for No. 2 white corn.
Q. Two——
A. 2 White corn.
Q. What was the quality of this corn you paid 46 cents a bushel?
A. That was No. 2 yellow corn. You understand that white corn is selling at quite a premium over yellow and has been for some time.
Q. Now, on June 8th, is that the next date?

Mr. Belnap: That is the one you just got.
The Witness: Just got.

By Mr. Enoch:

Q. All right, November 20th.
A. We paid Gordon Wrey 43 cents for 2 yellow corn.
Q. October 28th, that was soy beans, wasn't it?
A. I think it was soy beans.
Q. And the transaction on October 11th, was that corn?
A. That was 2 yellow corn.
Q. 2 yellow corn?
A. 2 yellow corn.
Q. How much did you pay for that and to whom?

A. Why, I will have to go to my records, but it was 1 cent more than the rail bid.

Q. You are going to get that in there in any event?

A. If I had known this was going to be this technical, I would have brought that with me.

[fol. 917] Q. When you say "rail bid," you mean bids put out to you from Chicago?

A. Usually by brokerage houses from Pontiac who operate for Chicago houses or Mr. Staley at Decatur.

Q. Are all of these bids that you are talking about here, describing as rail bids, bids from someone at Pontiac?

A. Well, there is one comes from Fairbury—Farrell Brothers.

Q. Where is that?

A. That is a Chicago house.

Q. Does that bid come from Chicago?

A. It is through Mr. Vorheis at Fairbury, who acts as their broker.

Q. These bids that you get and describe as rail bids have come from somebody located at Pontiac, at Fairbury?

A. Brokers at Fairbury.

Q. Are they located at those points?

A. Yes, sir.

Mr. Root: Mr. Examiner, I can probably explain this whole thing and save a lot of time.

Exam. Taylor: Counsel wants to cross examine.

Mr. Root: Go ahead.

By Mr. Enoch:

Q. Are all of these transactions here with respect to prices, prices to these farmers on the farm and in no instance had anything to do with the cost of transporting from the farm to the elevator?

[fol. 918] A. We have a rail bid and we have a Morris bid, which includes the transportation from the farm.

Q. I am talking about these different transactions, beginning on November 29th.

A. The transactions where we received bids from brokers would be for corn, over the rails.

Q. I asked you in connection with the transaction on November 29th, whether or not this 46 cents that you paid

to that farmer was net to him on the farm. You said yes.

A. November 29th?

Q. Yes. What was the situation in respect to each of the other transactions about which I inquired?

A. All of these examples given here are for either corn or beans, which was hauled to the river.

Mr. Enoch: That is all I have.

Exam. Taylor: Mr. Brown.

By Mr. Brown:

Q. Mr. Barclay, you have used the term "going over the rails." Now, what destinations did you refer to?

A. Well, we usually — that term in respect to the best bid we can receive for grain that is to be shipped over the rails. It might be for Decatur or Chicago, which is our two principal markets.

Q. It might be St. Louis on those?

A. St. Louis is not very good for us on oats; hasn't been for a long time.

[fol. 919] Q. When you said "going over the rails," it was to a market like——

A. Terminal market on the rails.

Q. Chicago, or Decatur, or some place like that?

A. Yes, sir.

Q. When you ship by rail, do you make a contract with the railroad and get a bill of lading indicating what the service will be over the rails to the point of destination?

A. After we have paid our freight bill we do, yes.

Q. Do you pay your freight bill at the time you get the bill of lading?

A. No, that is deducted from the grain after it is unloaded and made up in the account sales in the regular form.

Q. But the railroad collects its money at the destination?

A. Yes, sir.

Q. Under your rail shipments. Now, these bids that you get from Allied, do you mean the Co-operative Allied Grain Dealers Corporation at Morris, Illinois?

A. That is the style of your firm, is it not? Yes, sir.

Q. Is the Allied Company the only one located at Morris or Seneca or anywhere along the river that gives you bids?

A. That is our nearest point in the way of transportation.

Q. Do you get bids from any other river barge besides the Allied?

A. No.

[fol. 920] Q. When you get a bid from the Allied for either corn or beans, does that require you, if you accept it, to deliver the corn or the beans at the waterfront elevator for that price?

A. Yes, sir.

Q. Then the price that the Allied bids you for delivery at Morris is not the price that you pay the farmer, is it?

A. Oh, no. I have to have something out of it, and I have to pay this transportation.

Q. But you talked about the usual margin. You mentioned that, one of the first things you said. Now, what is your usual margin, if you care to give it?

A. Our aim is to get 2 cents a bushel.

Q. And when you were putting corn through your elevator, was that 2 cents a bushel your usual profit for handling, paying your expenses?

A. Yes, sir, that is what we have to get.

Q. Is that about what you are getting now?

A. That is about what we are getting now.

Q. Have you a rail rate to Chicago on corn which is less than your rate to Chicago on other grain?

A. Yes, we have a so-called lake rate of 10 cents.

Q. Were you along with the others for some months prior to last April requesting the railroads to give you a reduced rate on corn?

A. We did, but we asked for a much lower rate than that.

[fol. 921] Q. What is your rate now?

A. It is 10 cents.

Q. What did you ask for?

A. Seven.

Q. Would that have enabled you to still go over the rails?

A. That would have gone a long ways.

Q. What?

A. It would have gone a long ways towards stopping it.

Q. If it wouldn't move over the rails, why did you ask for 7 and get 10?

Mr. Belnap: Just a minute.

Mr. Brown: He said he asked for 7 and he got 10 and he only used the reduced rate he got on the Wabash Railroad on two cars.

The Witness: I would like to ask you one, Mr. Brown.

Mr. Brown: How?

The Witness: I would like to ask you one.

Mr. Brown: You can't do it now. I will take you outside afterwards, if you want to.

The Witness: All right, I will accept the challenge.

By Mr. Brown:

Q. When you accept a bid from the Allied which requires you to deliver to their elevator at Morris and you get your money, are you through with that transaction? Is it concluded so far as you are concerned?

A. Well, usually after we get the business, we pay this [fol. 922] truckman off.

Q. I am not talking about that. You get a bid from Allied for delivery of corn at their elevator. You accept that bid and you deliver the corn. You get your money from the Allied for the corn?

A. Yes, sir.

Q. Are you through with that particular transaction when you get your money?

A. I hope——

Q. As far as your relations with the Allied are concerned?

A. I hope I am.

Q. Then how do you know what happens to that corn after it gets into the possession of the Allied?

A. That is out of my line. I don't know.

Q. All right. You mentioned several truckers located in your own town and nearby. Are they also these itinerant truckers you talk about?

A. No, sir.

Q. Did those truckers, to your knowledge ever truck grain for you or anybody else to Chicago?

A. Well, I can't say about those people who live in Dwight. I don't believe that Carl Dickson trucks it to Chicago. I never heard of it.

Q. Did you ever sell grain to an itinerant trucker or any other kind of a trucker when you knew the grain was going to Chicago?

[fol. 922a] A. I never did sell to an itinerant trucker. I have no use for them.

Q. What is the capacity of your elevator?

A. Approximately 40,000 bushels.

Q. How long has it been in existence?

A. Well, that is something I can't answer. I rebuilt the workhouse in 1923, but at that time there were four concrete tanks with approximately 30,000 that were intact from a previous fire, which we added the workhouse to.

Q. The workhouse didn't increase the capacity, did it?

A. Oh, yes, the four tanks approximate 30,000 and the wooden workhouse, which is steel clad, is approximately 10,000.

Q. And when was that improvement completed?

A. 1923.

Q. That was long before you began selling grain to the barge?

A. Oh, yes.

Q. And that improvement now, I understand, is partially idle?

A. We use it for oats and we have got some Government corn stored in it.

Q. You haven't any control over the shipping of the Government corn, have you?

A. No, sir.

Q. Have you sold any soy beans to go to Chicago by rail?

A. Not recently.

Q. Have you watched the prices, Chicago prices for soy [fol. 923] beans in the last two months?

A. Yes, sir.

Q. Did they fluctuate widely from day to day?

A. Yesterday and the day before.

Q. I am talking about from day to day during the last few months beginning with October.

A. Yes, they did.

Q. Did the bids at Morris for soy beans fluctuate in the same way as the Chicago prices?

A. They fluctuate largely on the option market, Mr. Brown.

Q. Now, I want to get this clear. I understand that all the grain that you deliver at Morris you contract for at the farm, taking possession at the farm and delivering yourself either by—for your own account by other truckers at Morris?

A. Yes.

Q. And it doesn't go through your elevator at all; grain does not?

A. I will have to qualify that. If it happened to be 30, 35 or 50 bushels left over, we will take our truck and haul it over to the plant.

Q. Then you get an aggregation of these small amounts?

A. An aggregation. If we can get a thousand pounds——

Q. Then you ship that over the rails?

A. I think I have done that in two instances, and then there is other instances I have hauled it out of the elevator to Morris.

[fol. 924] Q. That is what I want to bring out. You not only have grain hauled for your account from the farm to Morris, but when you accumulate a small amount, say a thousand pounds at your elevator, you may not always ship it by rail but sometimes have it trucked over to Morris, is that right?

A. Well, that depends on what we think of the market.

Q. But do one of the two things?

A. Yes.

Q. And that is trucked over for your account when it is to go to Morris, trucked over for your account by somebody else?

A. Yes, sir.

Q. Would you say that figures two and a half cents for trucking from your elevator the same as you do from the farm?

A. Yes, 2½ cents applies to all my surrounding territory or the territory that draws to me.

Q. Are you a stockholder in Allied?

A. No, sir.

Mr. Brown: That is all.

Mr. Bradford: I have some questions.

Exam. Taylor: Mr. Bradford.

By Mr. Bradford:

Q. Mr. Barclay, I would like to inquire about this itinerant trucker you are talking about. Did he buy considerable grain from the farmers in your territory, on the farm?

A. I think in 1937 and 1938, before we found this new market, it took around 20,000 bushels each year, as near as [fol. 925] we could get at it.

Q. I believe in connection with this transaction from Lewis, you said that you received bids from Morris that

permitted you to pay 1 cent per bushel more than the itinerant trucker was paying, is that it?

A. It was at that time, that is the reason they got the job.

Q. And you also made the statement, in addition to giving him 1 cent, you saved him approximately 1 cent, that is, the producer, in the cost of transporting the grain from his farm to your elevator, is that correct?

A. I think the direct testimony, Mr. Bradford, shows that this man had sold to itinerant truckers occasionally and we were trying to bring him back to ours.

Q. You can answer my question. You did say that you saved the man the cost of transportation from the country to your elevator because you paid the transportation charge to Morris, is that correct?

A. That would be a saving to him, yes.

Q. Now, if the itinerant trucker took the grain on the farm with his truck from the farmer, wouldn't that farmer be up against a transportation charge from his farm to any place?

A. Now, what kind of a deal he had there, I don't know. I do know this, Mr. Bradford. I bought that grain because I paid more for it and went to the farm for it.

Q. You made the statement that you paid 1 cent more [fol. 926] than the trucker and you, in addition, saved the producer 1 cent in the transportation charge. Now, if the itinerant trucker took the grain on the farm, I would like to have you explain where you saved him 1 cent transportation charge from the farm to the elevator.

A. I think you have misunderstood this direct testimony, haven't you?

Q. If I did, I wrote it down wrong. I heard you say you saved him in addition 1 cent in the transportation.

A. Do you want me to read it again to you?

Q. I would be glad to have you, if I am mistaken, I would like to have it cleared up.

A. June 8th, 1939, Matt Lewis, four and a half miles west of Wing, came into our office and asked our prices on whitcorn. We promptly bid him 50½ cents per bushel and we explained we would bring the trucks to his farm and save him the cost of transportation to Wing, which would cost him 1 cent per bushel. We further added down there, this man had been selling to itinerant truckers occasionally.

Q. Now, on that portion of the business of the itinerant trucker, would he have been compelled to pay any transportation charge from the farm to any place, when the itinerant trucker took delivery of the corn on the farm?

A. Well, I don't suppose he would, but in this case we bought that corn and brought it back into our business.

[fol. 927] Q. On that corn, you didn't pay him 1 cent more and in addition save him one cent in transportation?

Mr. Root: I object to that. There is no evidence of what the itinerant trucker would have paid.

Mr. Bradford: Mr. Examiner, the statement of the witness was that he paid 1 cent more——

Exam. Taylor: The record will show what he said, and his reply this time will show what he said now.

Mr. Bradford: That is all I have.

Exam. Taylor: Any further cross-examination of this witness?

Mr. Enoch: I would like to be permitted to ask one more question, because an answer of this witness to Mr. Brown is somewhat contrary from what I understand the facts to be and I would like to inquire about it.

By Mr. Enoch:

Q. Do you ever get any account sales from Chicago in connection with this water-borne traffic that you sell to the concerns at Morris?

A. We don't get no account sales from Chicago, no.

Q. Do you get any account sales from anybody?

A. We do. We get the account sales from their office at Morris, and I want to add something else there. I don't pay any weighing or inspection. That is something else that is a saving to me over the Chicago.

Q. Over the Chicago?

[fol. 928] A. Yes, sir.

Q. You haven't got a copy of one of the documents, have you?

A. No, I haven't.

Q. Whose account was that, who was rendering an account to you on this? Some house at Chicago or the Allied Co-operative?

A. It comes to me through the Co-operative, Allied Grain Dealers Association.

Q. I know it might come to you through the Allied Co-operative.

A. And their personal check is with it.

Q. But what letterhead or what name is on the account sales?

A. Co-operative Allied Grain Dealers Association and others.

Q. What are these different items, you say inspection and weighing and so forth?

A. When I sell grain into Chicago, I have to pay a fee for weighing and inspection and sometimes a small amount of interest on drafts that I don't have at Morris because the grain is up one day and paid for the next.

Q. I have been trying to call your attention to this grain that you sell to the Allied in Morris.

A. Yes.

Q. Now, I understood you to say that on one of those account sales in connection with that grain, there were these inspection fees and so forth. Did I understand you correctly?

A. Not at Morris. Never any fee for inspection or weighing.

Q. On the account sales that you get from somebody in [fol. 929] connection with this grain delivered to the Allied at Morris, are there any items there showing inspection fees, weighing, elevation or anything of that kind?

A. No, sir.

Mr. Cole: May I ask a question?

Mr. Brown: Just a minute.

By Mr. Brown:

Q. I understood you to tell me you sold your grain as is at Morris and you had nothing more to do with it, is that right?

A. That is all I know. It goes up to Morris and they pay me for it. I don't know what they do with it.

Q. Do they pay you on the spot?

A. Just as soon as they get it weighed and inspected.

Q. Do they pay you on the spot for it, just as soon as they get it unloaded and weighed?

A. And inspected. I have had them do that. I would be right there.

Q. And other times they would send you a check later?

A. Yes. If I am up with the grain and I wait until it is graded and inspected, they will pay me right there for it.

Q. Pay you cash?

A. No, sir, check.

Q. An Allied check?

A. Yes, sir.

Q. That is what I understood you the first time.

[fol. 930] By Mr. Cole:

Q. Mr. Barclay, I understood that your town was approximately 38 miles from Morris, is that correct?

A. That is to the best of my knowledge. It is 38 miles.

Q. And that you get this grain you have been talking about within a radius of some four or five miles all around your town?

A. It will range a little further east and west than it does north and south.

Q. This Morris price that you learn of, do they quote that from day to day to others as well as to you?

A. It is always quoted delivered at Morris.

Q. It is quoted delivered Morris?

A. Yes.

Q. Now, if the farmer himself learned of the price that was being quoted at Morris, could the farmer get the same trucker that you employ and have that grain hauled down to the Allied and would the Allied then pay the farmer the price that they quoted you and would the farmer, in that event, be able to save this 2 cent normal profit that you like to make?

Mr. Belnap: Mr. Examiner, shouldn't those questions be reserved for somebody else who comes on the stand? He wants to know what Allied would do.

Exam. Taylor: The question is, what would the farmer get.

Mr. Belnap: What would Allied do? Let's have the question read.

Exam. Taylor: No, there is no Allied in this.

[fol. 931] Mr. Cole: No.

Mr. Belnap: May we have the question read.

Exam. Taylor: Read the question.

(Question read.)

Exam. Taylor: Can you get the Allied out of that?

Mr. Cole: I don't think it is objectionable the way it sets there, Mr. Examiner.

Exam. Taylor: Yould said "would the Allied pay the farmer."

Mr. Belnap: Mr. Examiner, the premise for the question is a business operation of Allied.

Mr. Day: I think—go ahead, Mr. Belnap.

Mr. Belnap: That is the only premise. Now, unless the man is qualified to state what Allied would do, he couldn't possibly answer the question.

Mr. Day: This man knows what the trade practices are down there.

Mr. Belnap: He didn't ask him what trade practices were.

Exam. Taylor: Mr. Cole is going to try to straighten it out.

By Mr. Cole:

Q. Mr. Barclay, when Allied is bidding for grain and you secure his bid, would that bid be open as well to the farmers as it would be to you?

A. I don't think so.

Q. Wouldn't the Allied pay anybody who brought grain to Morris the same price at the same time that they would be [fol. 932] willing to pay you?

Mr. Belnap: I object.

The Witness: I don't know.

Mr. Belnap: I object, if the Examiner please.

Exam. Taylor: He says he doesn't know.

Mr. Cole: All right.

Mr. Belnap: It is an improper question.

By Mr. Cole:

Q. Have the Allied people had purchasers or purchasing agents around in the territory that you work in?

A. Not to my knowledge.

Q. Not to your knowledge.

A. Deal through elevators only. My understanding is they deal through elevator men only.

Q. The Allied people deal through the elevators only?

A. Yes, sir.

Q. Now, at the time that you secured that bid from the farmer, I mean at the time you secured that bid from Allied for a certain number of cents per bushel on corn delivered at Morris, do you from the way you do business and from the way you handle it with the farmer, would it be impossible for somebody else to go to the farmer and get that same corn at the price that you offer to pay the farmer for it?

Mr. Root: Read that question again. It go so long, I lost track of it.

(Question read.)

[fol. 933] The Witness: All I know is the trade practices of the Co-operative Allied Dealers. I don't deal with any other company on the river. I have no connections with them.

By Mr. Cole:

Q. Well, Mr. Barclay, you are very well acquainted throughout your territory that you work in, aren't you?

A. I should be. I have been there 16 years.

Q. All right. Now, what is it, if you know, that prevents the farmer who has grown the grain from selling his corn direct to Allied and save your 2 cent middle-man's profit?

A. I can't answer. I can't tell what the Allied people might do.

Q. You don't know what there is that prevents that from happening?

A. I know what their practice of doing business is.

Q. I don't get you.

A. I know their business practice is to buy from grain dealers only.

Q. They buy from the grain dealers——

A. Only.

Q. Only. But do you know of any physical impediment that would prevent the farmers from selling direct to them and eliminating your 2 cent normal profit?

A. I do not.

Mr. Cole: That is all, thank you.

Exam. Taylor: Is that all from this witness? Anything [fol. 934] on redirect?

Mr. Macaulay: One question.

Redirect examination.

By Mr. Macaulay:

Q. Mr. Barclay, if you were deprived of the Morris market, do you believe it would be possible to compete with the itinerant trucker who would buy grain in your territory?

A. Well, it wasn't in the past. Probably the same practices would show up again; if I didn't have a way to defend myself, I probably would begin losing this business again.

Mr. Macaulay: That is all.

Exam. Taylor: Is that all?

Mr. Belnap: I would like to ask one or two questions.

Exam. Taylor: Now, let's see. Isn't this Mr. Root's witness?

Mr. Belnap: Yes, I would like to ask——

Mr. Root: I haven't had a chance to ask yet.

Mr. Belnap: I won't ask the question if you will rule it out.

Exam. Taylor: You are not ruled out, but I thought Mr. Root should come first. It is his witness.

Mr. Root: I understood Mr. Belnap came first.

Exam. Taylor: It isn't cross-examination; it is redirect.

Mr. Belnap: There were some matters developed in the cross-examination which I am not quite clear on and I wanted to inquire on.

[fol. 935] Exam. Taylor: You are redirect. Go ahead.

Mr. Belnap: If I may.

By Mr. Belnap:

Q. When you sell grain to the river, do you purchase it yourself from the farmer first?

A. Yes, sir.

Q. When you sell grain for shipment by rail to Chicago, do you purchase it from the farmer yourself?

A. Yes, sir.

Q. Is your relationship between yourself and the producer the same in both cases?

A. Yes, sir.

Mr. Belnap: That is all I have.

Exam. Taylor: Mr. Root, have you any further questions?

Mr. Root: That was the same question I was going to ask, get that relationship straightened out.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused.

(Witness excused.)

Exam. Taylor: We will take a short recess.

(A short recess was taken.)

Exam. Taylor: Gentlemen, let's come to order. I understand Mr. Burwell wants to get out of town. Burwell, is that the name?

Mr. Macaulay: May I say something off the record?

Exam. Taylor: Off the record.

[fol. 936] (Discussion outside the record.)

T. C. Burwell, was sworn and testified as follows:

Direct examination.

By Exam. Taylor:

Q. Give your name to the reporter, please.

A. My name is T. C. Burwell. I am vice-president of the A. E. Staley Manufacturing Company, located at Decatur, Illinois. I have been connected with the traffic department of the Staley Company for more than 22 years, and prior to that time was with the Wabash Railway in various capacities.

The Staley Manufacturing Company buy corn and soy beans at various points in Illinois, including the terminal markets which are processed at Decatur and which are processed at Painesville, Ohio. They also buy corn and soy beans in adjoining states. We buy wheat, corn and oats for the purpose of merchandising such commodities as such. We are here in support of the tariff of the carriers which restricts the reshipping rates eastwardly from Chicago so as not to apply on ex-river grain.

There is a saturation point in the Chicago market which is soon reached in so far as such ex-river grain is concerned, and where the reshipping rates eastwardly from Chicago are not applicable on such grain, the grain would move through the elevators from which we purchase grain. We find, to keep our plant in operation, that it is necessary for us at times to come into the Chicago market and buy grain which has moved into Chicago via the river; where

[fol. 937] in times past we have been able to buy such grain direct from the elevators, including the elevator at Wing, represented by the previous witness.

I might add further there that the Illinois carriers have published alleged truck-competitive or water-compelled rates applying on intrastate traffic into Chicago, which rates are not subject to transit and which rates are compelled by reason of the fact that the reshipping rates eastwardly from Chicago do now apply on ex-river grain. Our position is that the application of such rates is harmful to the best interests of the producers of grain and the merchandisers of grain outside of the Chicago district.

I think that is all I have.

Exam. Taylor: Questions by respondents? (No response.) Cross examine.

Cross-examination.

By Mr. Belnap:

Q. Do you now bid the elevator at Wing?

A. Yes. sir, we bid the elevator at Wing, including some five or six hundred other elevators throughout the state of Ilinois.

Q. And when your bid is the best bid the elevator has, you are able to get the grain?

A. That is correct.

Q. And when the grain instead of being sold you direct from that elevator moves into the terminal market, is it because the elevator can get more money out of the grain [fol. 938] when it makes that movement?

A. There are two reasons for grain to move to terminal markets. If you have a soft market, the elevator operator in the country station will probably sell it to us at a firm price. On the other hand, if your market is a bullish market, he will take his chances and consign to Chicago, expecting to get a cent and a half more tomorrow morning. It depends entirely on the market conditions.

Q. You are talking in both cases about rail movements, are you not?

A. Yes.

Q. When your bid is competing with a bid from the river, the grain goes to the river, I would understand, because

the price to the elevator man and through him to the farmer is better than the price you may be able to offer?

A. That is correct.

Q. And that is a condition which adversely affects your intersts?

A. That is right.

Q. As a purchaser of grain?

A. That is right.

Q. Do you think that would be corrected, looking at it from your standpoint, if the proposal of the Eastern lines was made effective?

A. We know it will be corrected to a certain extent; not [fol. 939] entirely, but it will be a very substantial per cent of it will be corrected.

Q. That is to say, the elevator man will then not have this better bid from the river, better than your bid?

A. That is right.

Q. That is what you hope to achieve?

A. That will be the result.

Exam. Taylor: Mr. Macaulay.

By Mr. Macaulay:

Q. In other words, if the reshipping rates are eliminated from barge grain, you wouldn't be required to buy as much of your grain in the Chicago market as you are now required to buy?

A. That is correct.

Mr. Macaulay: That is all.

The Witness: It would mean this to the rail carriers; elaborating on the answer, taking from Wing, for example, we would buy grain at Wing and we would pay an all-rail rate under a transit operation to New York, for example. It would be more money to the carriers in the aggregate.

Mr. Belnap: Would you indulge me for one question suggested by this question and answer?

Exam. Taylor: Certainly.

By Mr. Belnap:

Q. When you buy in the Chicago market, do you buy through commission firms?

A. That is right.

[fol. 940] Q. And if this change is brought about, you think there will be less business for the commission firms?
A. Yes. Cut out the middle-man.

Mr. Brown: That suggests a question, if you please.

Redirect examination.

By Mr. Brown:

Q. When you say "commission firms," do you mean commission merchants of the so-called receiving class or some commission merchants who are order buyers?
Mr. Root: I didn't hear that question.

(Question read.)

Exam. Taylor: By "order buyers," do you mean on the Board of Trade?

By Mr. Brown:

Q. On the Board of Trade, who take orders from these firms to buy from any elevator they can buy from?
A. Are you asking me that question?
Q. Yes, sir.
A. The answer is—I refer to the latter, a man who takes an order from us and buys from whomever he can buy it from to fill the order.

By Mr. Belnap:

Q. That man is a member of the Chicago Board of Trade, isn't he?
A. Yes. So are we.

Exam. Taylor: Any further questions of this witness?
Mr. Cole: I have one, Mr. Examiner, please.
Exam. Taylor: Mr. Cole.

[fol. 941] By Mr. Cole:

Q. Mr. Burwell, Mr. Belnap asked you whether you put out bids to this elevator—where was it?
Mr. Enoch: Wing.

By Mr. Cole:

Q. At Wing, and in some instances it was found that he sold to the water and you didn't get your order filled

with grain that time. At the same time, did you have your bids out over the territory from which you draw from?

A. That is right. If you would like, I will e aborate on our bidding system.

Q. No, I don't mean that.

A. The answer is yes.

Q. And at the time that this bid at Wing was unfilled, were you able to get grain at your bids in other territory?

A. If we are not able to get it in other territories in the country from the country elevator operator, we were then compelled to come into the Chicago market or to the terminal markets and buy the grain.

Mr. Cole: That is all. Thank you.

Exam. Taylor: Is that all from this witness?

Mr. Belnap: I haven't any more questions.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam Taylor: Mr. Bradofrd, they want to ask you a question. Have you any objection to taking the stand?

Mr. Bradford: Mr. Examiner, I was here last night and [fol. 942] I came back this morning. I broke engagements to come back here and I don't see why I should be called back on the stand because counsel was not here. I do object to going back on the stand.

Mr. Macaulay: Just so the record might show, I was here before the convening of the session this morning. There was no appearance that it was going to convene shortly.

Exam. Taylor: Did that give you any right to leave?

Mr. Macaulay: I just want to show why——

Exam. Taylor: May not the Examiner have held the meeting open or not convened the meeting because of some reason that you didn't understand about?

Mr. Macaulay: I am not objecting to that part, your Honor. I am making——

Exam. Taylor: I want to know if you are criticising the Examiner's action.

Mr. Macaulay: Not at all, your Honor, not at all. That is not it. I thought I had an opportunity to get up to the 39th floor and get my bag before this witness would be excused. He hadn't taken the stand and I had reason to believe that I——

Exam. Taylor: I am sorry, Mr. Macaulay, but the witness refuses to take the stand again. Next witness. Mr. Belnap.

Mr. Root: Are we putting ours on now?

Mr. Belnap: Mr. Examiner, I now have examples of the documents covering inbound shipments of grain via the river to Chicago.

[fol. 943] Exam. Taylor: Show them to counsel, please.

Mr. Belnap: Yes, I will. I would like to say for the record what they are.

Exam. Taylor: Yes.

Mr. Belnap: These are carbon copies of the originals and have the paid stamp.

Mr. Day: There are two of them, are there?

Mr. Belnap: There are two of those. I have a carbon copy of a freight bill covering a movement inbound under the interstate proportional——

Exam. Taylor: Intra?

Mr. Belnap: Interstate proportional. I have a carbon copy of a freight bill showing the movement inbound under a lake local and I also have the document covering a lake movement into Chicago, which is enttiled a lake grain bill of lading, has the weighmaster's tally affixed thereto.

Exam. Taylor: And that shipment originated at Duluth?

Mr. Belnap: This shipment originated at Duluth.

Exam. Taylor: And came down Lake Michigan on a boat?

Mr. Belnap: That is correct, sir, to South Chicago.

Exam. Taylor: South Chicago?

Mr. Belnap: South Chicago. These are samples of the documents which are registered with the Inspection Bureau. We do not have a Federal Barge Line expense billing. None of my people happen to have one available.

[fol. 944] Exam. Taylor: Off the record.

(Discussion outside the record.)

Mr. Belnap: Mr. Examiner, I hand you a freight bill of the John I. Hay Company, No. 1387, which is a carbon copy of an original registered with the Inspection Bureau.

Exam. Taylor: This shipment originated at La Salle?

Mr. Belnap: At La Salle.

Exam. Taylor: Moved to Chicago by the barge canal?

Mr. Belnap: By the John I. Hay Company, via the Illinois waterways.

Exam. Taylor: And this bill was surrendered through the Inspection Bureau for registration?

Mr. Belnap: It is registered with the Inspection Bureau for transit purposes.

Exam. Taylor: It will be received as Exhibit No. 23.

(Exhibit 23, received in evidence.)

Mr. Belnap: I have another bill covering a shipment of another date.

Exam. Taylor: Just a minute.

Mr. Brown: What kind of grain did that cover, Mr. Belnap?

Mr. Belnap: That covered corn; the exhibit just marked. I have another bill covering a shipment of beans, which, in other regards, is similar to the one marked 23.

Exam. Taylor: Also moved by the barge canal from La Salle to Chicago and was surrendered to the Inspection [fol. 945] Bureau for registration of the beans.

Mr. Belnap: That is correct, sir.

Exam. Taylor: Mark that exhibit 24.

(Exhibit 24, received in evidence.)

Mr. Belnap: Mr. Examiner, I now hand you a carbon copy of a Santa Fe expense bill, which covers an inbound movement to Chicago via rail, and as to the rate shown thereon, being interstate proportional——

Exam. Taylor: Interstate?

Mr. Belnap: Interstate proportional.

Exam. Taylor: That transportation paper was also registered with the Inspection Bureau?

Mr. Belnap: That is correct, sir, and the original on that bill is——

Exam. Taylor: Blandinsville?

Mr. Brown: Blandinsville, Illinois?

Mr. Belnap: The bill covers a shipment, Mr. Examiner, from Sciota, a non-agency station, the bill of lading being issued at Blandinsville, Illinois.

Exam. Taylor: That is also bulk beans. It will be received as Exhibit 25.

(Exhibit 25, received in evidence.)

Mr. Brown: And what was the rate you said was interstate?

Mr. Belnap: 14 cents.

[fol. 946] Mr. Brown: To Chicago? The next document I hand you, Mr. Examiner, is a carbon copy of a freight bill of the Chicago, Rock Island & Pacific Railway Company, covering a shipment of corn from Tinley Park, Illinois, the rate shown thereon being the lake local.

Exam. Taylor: Five cents.

Mr. Belnap: That bill was—the original of that bill was also registered with the Inspection Bureau for transit purposes.

Exam. Taylor: Mark it Exhibit 26.

(Exhibit 26, received in evidence.)

Mr. Belnap: I next hand you, Mr. Examiner, a lake grain bill of lading covering a shipment of rye via lake steamer from Duluth, Minnesota, to South Chicago, Illinois. This is the original billing. It has the memorandum of the weighmaster attached thereto. The carbon of that bill was registered with the Inspection Bureau.

Exam. Taylor: That shipment moved from Duluth on August 20, 1938, to South Chicago, Illinois?

Mr. Belnap: That is correct, sir.

Mr. Brown: 1938?

Exam. Taylor: 1938; August 20, 1938, 144,000 bushels of No. 1 rye. That will be received as Exhibit No. 27.

(Exhibit 27, received in evidence.)

Mr. Brown: Mr. Belnap——

Mr. Belnap: Yes, Mr. Brown?

[fol. 947] Mr. Brown: Are all of these other bills besides the ex-lake bills of lading of recent date?

Mr. Belnap: Yes, they were December. The two barge bills were December bills. Take a look at them.

Mr. Brown: December of this year?

Mr. Belnap: Yes. I didn't look at the freight bills.

Mr. Brown: You offered them. Is there any rate for transportation shown on these barge bills?

Mr. Belnap: I think they speak for themselves, Mr. Examiner.

Mr. Enoch: I think the record should show at this time who it was that rendered these bills for the purpose of engaging the outbound proportional rate.

Mr. Belnap: I will be glad to read in from these bills, Mr. Examiner, just read them in.

Exam. Taylor: Read them in, in accordance with the question.

Mr. Belnap: Perhaps it would be helpful if I took one of these barge bills about which there seems to be the greatest interest and read everything that is on the bill. That will — part of this record.

Mr. Enoch: I haven't any objection to doing that, but you stated who surrendered it for engaging the outbound —tional?

Mr. Belnap: Yes, but let me read the bill.

[fol. 948] Mr. Enoch: I am going to come back to that question.

Mr. Belnap: It is headed: "Freight bill, John I. Hay Company, 37 West Van Buren Street, Chicago, Illinois." The freight bill is No. 1355, trip No. CC-62, invoice date December 2, 1939, tow boat Anna M., barge 109, shipping date December 1, 1939, shipping point La Salle, Illinois. It is addressed to the Continental Grain Company, 332 South La Salle Street, Chicago, Illinois. That is all in the heading.

Mr. Brown: Is that Exhibit 23?

Mr. Belnap: This is Exhibit 24.

Mr. Brown: The one you gave was Exhibit 23, the corn; the one you just read.

Mr. Belnap: No, this is Exhibit 24, the one I am reading from.

Mr. Brown: All right.

Mr. Belnap: Below the heading it shows as follows: "Freight from La Salle to Chicago, Illinois, viz:" there was originally typed on the bill 34,000. That has been stricken out and in red above that appears "31,957.50 bushels beans @ $.015 per bushel." In the extension, the figure originally was $510.00. That is in typewriting. That has been stricken out in red, and over it now appears $479.37. In ink then appears on the bill this: "Paid 12/6/39, John I. Hay Company." There is then a stamp on the bill, "Paid December 6, 1939, Continental Grain Company, Chicago." Then in red pencil appears on the bill, "Unloaded [fol. 949] R. I. Terminal Elevator, 12/4/39," and a number, 1917470, followed by the cross hatch pound mark.

That bill, in answering Mr. Enoch's question, was registered with the Inspection Bureau by the Continental Grain Company.

Mr. Enoch: Now, may I suggest, if your Honor please, that inasmuch as these documents are in evidence by exhibit number, there is no use reading them in the record, and I think if Mr. Belnap will identify it by number, and say by whom it was surrendered, what shipper, that is all I care about.

Mr. Belnap: I can answer that question, Mr. Examiner. Exhibit 23 was registered with the Inspection Bureau by the Continental Grain Company. It shows a freight bill rendered to the Continental Grain Company.

Mr. Brown: Same rate for the freight charges?

Mr. Belnap: The same amount per bushel, except that the bill covers corn. The railroad expense bills which are exhibits Nos. 25 and 26, were registered with the Inspection Bureau by the Continental Grain Company; Exhibit 27 being the original lake grain bill of lading, was registered with the Inspection Bureau by the Norris Grain Company.

Exam. Taylor: Now, you have some, Mr. Cole?

Mr. Cole: The next one will be what number?

Exam. Taylor: No. 28. Off the record.

(Discussion outside the record.)

[fol. 950] Exam. Taylor: All right, Mr. Cole.

Mr. Cole: I offer Exhibit No. 28, which is an exact copy of the transportation paper registered with the Central Weighing and Inspection Bureau, representing a shipment to the Continental Grain Company of——

Mr. Tannehill: What number?

Mr. Cole: I am looking at 379106, Transit Bureau 379106. I don't find the kind of grain. I am looking for the kind of grain it is.

Mr. Tannehill: Corn.

Mr. Belnap: Does it say corn on there?

Mr. Tannehill: It doesn't say so.

Mr. Cole: It says it represents 44,804.16 bushels. It does not indicate what kind of a commodity it is, other than it is in bushels. It shows that a freight charge——

Exam. Taylor: Let's see if, Mr. Tannehill can tell us from papers he has.

Mr. Cole: No, he has a copy of this.

Mr. Tannehill? I have a copy of this.

Mr. Enoch: Do you want to know what the commodity was?

Mr. Cole: That is what I was hunting for.

Mr. Enoch: It isn't shown on the bill but Mr. Tannehill has some other information.

Mr. Tannehill: I have outbound shipping records on the same Transit Bureau No. 379106; corn.

Exam. Taylor: That is received as Exhibit 28.

[fol. 951] (Exhibit 28, received in evidence.)

Mr. Schier: What freight rate is shown on that?

Mr. Tannehill: One and a half cents a bushel.

Mr. Brown: Did you give the transportation company at Chicago?

Mr. Tannehill: John I. Hay.

Mr. Cole: Exhibit No. 29 is a copy of a paper registered with the Transit Bureau, representing a movement——

Mr. Tannehill: Will you call off the Transit Bureau number?

Mr. Cole: The Transit Bureau number, 391584, representing a movement by the Mechling Barge Line from Peoria to the Continental Grain Company in Chicago, 28,000 bushels of bulk yellow corn at a transportation charge of 4 cents.

Mr. Brown: Per bushel?

Mr. Tannehill: 4 cents per hundred pounds.

Exam. Taylor: And apparently the weight shown on that bill is 1,566,610 pounds.

Mr. Tannehill: That is correct.

Exam. Taylor: It will be received as Exhibit No. 29.

Mr. Childe: What was the original point of the first shipment, Exhibit 28?

Mr. Belnap: La Salle.

Mr. Tannehill: La Salle.

Mr. Cole: Exhibit No. 30 is a copy of the transportation [fol. 952] papers registered with the Inspection Bureau, representing their No. 391585. It covers a movement via the Lawrence Transportation Company to the Continental Grain Company. The point of shipment was Mile Nine, Illinois. It represents bulk——

Exam. Taylor: Date?

Mr. Cole: The date of the shipment was November 15, 1939. Represents a shipment of bulk corn, 8,367 bushels and 18 pounds. The total weight of the shipment was 468,570 pounds and it shows a freight rate paid to Chicago of 5 cents.

Mr. Enoch: It doesn't say anything about rate on there, does it?

Mr. Cole: No, it just shows 5 cents in there, and the total bill was $234.29. That has been computed out as the total of the bill.

Exam. Taylor: It will be received as Exhibit 30.

(Exhibits 29 and 30, received in evidence.)

Mr. Cole: Exhibit No. 31 is the copy of the transportation papers registered at the Transit Bureau under Transit No. 392284, representing a movement via the transportation system of John I. Hay Company. It is a shipment to the Continental Grain Company from La Salle consisting of 43,007.38 bushels of yellow corn. It shows a cent and a half per bushel with a total transportation bill for $645.12.

Exam. Taylor: And the number of pounds unloaded into the Rock Island Terminal Elevator, 2,408,430 pounds. It [fol. 953] will be received as Exhibit 31.

(Exhibit 31, received in evidence.)

Mr. Cole: Exhibit No. 32 is a copy of the transportation papers registered with the Transit Bureau under their No. 392790, representing a movement via the Allied Barge Corporation for the Lowel Hoit and Company at South Chicago, representing a shipment from Morris, Illinois, November 25, 1939, of some oats. There is 19,271.08 bushels of oats and beans, 8,014.20 bushels of beans. The rate here on the oats is .014. The rate shown on the beans is .0175. The total freight bill, according to this bill for the oats is $269.79, and for the beans is $140.25, making a total of this bill, which is receipted, in the amount of $410.04. The total weight in the shipment represented by this Transit Bureau No. 392790, is 1,097,640 pounds. This is made up, as I said before, of the beans and the oats. That is the total.

Exam. Taylor: It will be received as——

Mr. Brown: Give me the barge number, please, if there is any shown, will you, please.

Mr. Cole: Barge No. 745.

Exam: Taylor: It will be received as Exhibit 32.

(Exhibit 32, received in evidence.)

Mr. Enoch: Mr. Cole, there isn't anything on there about a rate, is there?

Mr. Cole: It just uses that as the figure which they have

[fol. 954] worked out to the total that is over on the right hand side.

Exam. Taylor: And the inference is that it is a receipted freight bill, that that was the charge that was collected for transportation.

Mr. Enoch: That is right.

Mr. Cole: Exhibit No. 33 is a copy of the paper, transportation papers registered with the Transit Bureau under their No. 392627. It represents a movement via the A. L. Mechling Barge Line, covering a shipment to the Norris Grain Company at Chicago from Henry, Illinois, November 25, 1939, moving in Barge No. 4, and it shows that this shipment was composed of three commodities; corn, oats and beans; 241,480 pounds of corn; 150,480 pounds of oats; 235,070 pounds of beans; making a total weight of the three commodities of 627,030 pounds, and there is no statement on this paper indicating the amount of the freight either per bushel or per pound for the total freight paid. It is simply stamped that it has been prepaid, without any indication of what has been prepaid.

Exam. Taylor: And it shows that it was unloaded November 28, at the Norris elevator. Let it be received as Exhibit 33.

(Exhibit 33, received in evidence.)

Mr. Cole: Exhibit No. 34 is a copy of the transportation papers registered with the Transit Bureau under their No. 392626, representing a movement via the A. L. Mechling Barge Line, in Barge No. 7, to the Norris Grain Company at Chicago, representing a shipment originating at Chilli- [fol. 955] cothe, Illinois, November 27, 1939. The shipment is corn; 690,600 pounds, unloaded November 26th in the Norris elevator—November 28th, rather. There is no statement on the bill or paper that any amount per bushel or per weight of any kind was paid, nor the total. It doesn't show the total charges paid; it simply is marked "prepaid."

Exam. Taylor: It will be received as Exhibit 34.

(Exhibit 34, received in evidence.)

Mr. Cole: Exhibit No. 35 is a copy of the transportation papers registered with the Transit Bureau under their No. 319812, representing a shipment moving via the A. L. Mechling Barge Line to the Norris Grain Company in Chicago, covering a shipment originating at Patonville,

Illinois, April 7, 1939. It has on it: "Finnegan Grain Corporation, Barge No. 1108; tow boat: Gladys M." It shows that it covers the shipment of corn weighing 1,546,290 pounds, which was unloaded in the Norris private and public elevator under date of April 10, 1939. This paper, again, does not show the amount paid, either per bushel or per hundredweight, and does not show the total charges that were paid.

Exam. Taylor: For the transportation.

Mr. Cole: For the transportation. It simply shows the word "prepaid."

Exam. Taylor: It may be received as Exhibit 35.

(Exhibit 35, received in evidence.)

[fol. 956] Mr. Cole: Exhibit 36 is the copy of the transit papers registered with the Transit Bureau under their No. 320786, covering a shipment via the A. L. Mechling Barge Line to the Norris Grain Company, South Chicago, representing a shipment from Patonville, Illinois, originating April 12, 1939. It shows that it moved in Finnegan—or rather there is a statement on there of a Finnegan Grain Corporation Barge No. 1112, Gladys M. It shows that the commodity was corn to the amount of 1,581,590 pounds; unloaded in the Norris elevator on April 14, 1939. This paper does not show any rate per bushel or per hundredweight nor does it show the total transportation charges paid. It simply has on the bill the word "prepaid."

That is all.

Mr. Brown: What barge number, please?

Mr. Cole: It says "barge No. 1112."

Mr. Macaulay: I want to call attention to the fact that there is a space between "Finnegan Grain Corporation" and "Barge No. 1112," so there is no particular tie-up between the name of the—the number of the barge and the name of the company that was shipping. The information that shows on the original probably had designations which would indicate who the shipper was.

Mr. Enoch: Perhaps he will have a witness explain all that for us.

Mr. Macaulay: Yes, I will. But the way it was read into [fol. 957] the record, it looked as though that barge number was connected with the Finnegan Grain Corporation.

Exam. Taylor: That will be received as Exhibit No. 36.

(Exhibit 36, received in evidence.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

W. T. TANNEHILL, recalled, previously sworn, testified further as follows:

Direct examination.

By Exam. Taylor:

Q. Mr. Tannehill, I believe you have been checking up on the record numbers that have been given of the Transit Bureau, and do you have a paper before you that shows that these same shipments moved out and——

A. I have a record before me, Mr. Examiner, which shows as to Barge 102 from La Salle on October 25, 1939, that there was—that a portion of that moved out to order of the Continental Grain Company, Baltimore, Maryland; notify: Continental Grain Company, New York; and that the commodity was corn. It covers two outbound carloads from that shipment.

Q. And that outbound movement was accorded the outbound transit rate?

A. That is correct.

Q. The balance of the through rate from the——

By Mr. Brown:

Q. It wasn't the transit rate, was it, Mr. Tannehill? It was the proportional, wasn't it, is that right?

[fol. 958] A. The reshipping export rate of 16 cents is shown on here.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

By Exam. Taylor:

Q. Just following through the record of the Transit Bureau, Mr. Tannehill, you are going to introduce as Exhibit No. 37 the outbound information?

A. Exhibit 37 is a copy of the Transit Bureau's No. 105949, dated October 31, 1939, at Chicago. The printed form is headed "Transit Shipping Direction." It shows that two cars of bulk corn were ordered to the Continental Grain Company, Baltimore, Maryland; notify the Continental Grain Company, New York, for export. Transit house of the Rock Island Terminal Elevator. The date loaded, October 30th, and this Transit Shipping Direction hooks up with Exhibit 28 to show that the inbound move was in connection with the John I. Hay Company, Barge 102, from La Salle, Illinois, and that the commodity was corn. One car weighed 120,000 pounds and one 93,000 pounds. The outbound rate was 16 cents, which in this instance was the reshipping export rate.

Q. The reshipping export proportional rate?

A. Proportional reshipping, either.

Exam. Taylor: Exhibit 37, will be received.

(Exhibit 37, Witness Tannehill, received in evidence.)

Mr. Belnap: May I ask a question or two about this?

Exam. Taylor: Yes.

[fol. 958a] Cross-examination.

By Mr. Belnap:

Q. Mr. Tannehill, might I inquire as to Exhibit 37. Is that the same form used when the reshipping or proportional rates are claimed on a shipment which has had prior transportation by rail?

A. That is correct.

Q. Is it also used on a shipment outbound from Chicago which has had prior transportation by rail?

A. That is correct.

Mr. Brown: May I ask Mr. Tannehill a question following this one?

Exam. Taylor: Certainly.

By Mr. Brown:

Q. Mr. Tannehill, is this 16 cent proportional rate the same as the Eastern rails' division of the joint through rail rates from Illinois to Baltimore for export?

A. Yes.

Q. And is this 16 cent reshipping rate the same rate that would apply on grain that came in by rail from Iowa, Minnesota and Wisconsin?

A. If it was for export.

Q. For export?

By Mr. Belnap:

Q. Is there a joint through export rate from La Salle to the destination of your shipment?

A. By rail?

Q. Yes.

[fol. 959] A. Yes, sir.

Mr. Brown: I would like to ask counsel a question now.

Mr. Belnap: Who, me?

Mr. Brown: Yes, you introduced these things. You said that you couldn't furnish a Federal Barge Line manifest or bill of lading. Don't you have those into Chicago, showing movement to Chicago?

Mr. Belnap: We did not have one available that could be readily located this morning.

Mr. Brown: That is because there has been none?

Mr. Belnap: The record will show what volume there was, Mr. Brown; what volume moved which was covered by documents.

Mr. Brown: By movement by the Federal Barge Line to Chicago?

Mr. Belnap: I think the record will show there have been shipments via Federal Barge Lines to Chicago. That is going to be covered by a witness and he will say whatever tonnage moved and was covered by the ordinary shipping documents. All I said was, in the short time available, we weren't able to locate one this morning.

Mr. Childe: Mr. Examiner, I would like to inquire in connection with the joint through rate from La Salle to Baltimore just mentioned by Mr. Tannehill, whether that is based on a combination of locals on Chicago, plus proportionals out?

Mr. Cole: If the Examiner please, we went into that when Mr. Tannehill put his exhibits in, and one of Mr. [fol. 960] Tannehill's exhibits shows exactly that same thing, and at the time that Mr. Tannehill put it in, Mr. Childe, the same man that is cross-examining now, cross-examined on that very point. So that the record is abso-

lutely as clear as we could hope to make it as to just how those rates are made up.

Exam. Taylor: Does that satisfy you?

Mr. Childe: No, sir. I would like to know as to this rate. As far as I recall it, it isn't in any exhibit, how it is made up.

Mr. Cole: I object——

Mr. Brown: Mr. Examiner, I asked Mr. Tannehill if this 16 cent rate from Chicago to Baltimore was the division of a one-factor through rate from points in Illinois to Baltimore for export, and he said yes. Now, it doesn't make any difference how that rate is made from La Salle or any other point. This is what the Eastern railroads get out of that through rate.

Mr. Childe: I would like to know what the through rate is.

Mr. Day: Well, could we agree to supply Mr. Childs a joint through rate after a while, to save time?

The Witness: A joint through rate is in one of my exhibits. I can't recall that.

Mr. Brown: If somebody has got the ICC number on 245-F, that will give that.

Mr. Schier: ICC 3356.

Mr. Brown: Now, Mr. Childe, you can get the information [fol. 961] out of that tariff.

Mr. Childe: I am satisfied if it is furnished for the record, which the carriers' witness has just agreed to do.

Mr. Day: We will find it and give it to Mr. Childe.

Mr. Cole: May we go off the record, please?

Exam. Taylor: Yes.

(Discussion outside the record.)

Exam. Taylor: Back on the record.

Mr. Cole: If the parties will get Exhibit No. 9 and if Mr. Childe will get Exhibit No. 9, it will be recalled that when Mr. Tannehill put this exhibit in as explaining the rate situation and as illustrating the rate situation, these very questions as to the make-up and how they were worked through Chicago, when they did work through Chicago, was gone into by Mr. Childe. There is the exhibit.

Mr. Childe: Can't we get the rate without all this conversation, Mr. Examiner?

Exam. Taylor: You started it. Next witness.

(Witness excused.)

Mr. Root: May I call a witness?

Exam. Taylor: I would like to proceed in some kind of an orderly fashion.

Mr. Cole: Off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

[fol. 962] Exam. Taylor: On the record. I want to know if the respondents agree that the exhibits which have been introduced this morning, including those by Mr. Belnap, starting with Exhibit 23 and going to the last one introduced, Exhibit No. 37 introduced by Witness Tannehill, are demonstrative of the through movement of the grain, beans, corn, whatever it is, from the origins stated, through the transit house at Chicago to ultimate destination in the East? Is that agreed to?

Mr. Day: Taken comparatively, I think we can agree to that.

Exam. Taylor: I think that will be sufficient.

Mr. Cole: Thank you.

Mr. Enoch: I agree that these documents are typical of those surrendered in an effort to properly engage these outbound proportional rates, but I don't agree that there is any through movement in connection with it.

Exam. Taylor: As to that, I think you can argue on your brief. Off the record.

(Discussion outside the record.)

Exam. Taylor: Call your next witness, Mr. Root. Proceed, Mr. Root.

Mr. Root: Mr. Carper, please.

R. W. Carper was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

[fol. 963] A: R. W. Carper.

Q. Where do you reside?

A. Coal City, Illinois.

Q. State your business or occupation.

A. I am a farm operator. I operate ten farms in Grundy County, in five different townships, of my own and my wife's, and I also operate by other parties some 15 farms. I might say, these ten farms average about 240 acres each. They are primarily grain farms. We have a few cattle, few dairy herds, small. These 15 farms that I operate are smaller. They are operated by other people.

Q. Grain farms?

A. They are primarily grain farms.

Q. Do you engage in any other business or occupation down there?

A. I have been also in a little bank down there for some 15 years.

Q. As a matter of fact, you are president of the Coal City Bank?

A. President, at the present time.

Q. Mr. Carper, have you got a statement that you would like to make in regard to this case?

A. Well, from the standpoint of a producer of grain, we have achieved an advantage down there and we don't like to see it taken away from us, and I have some figures here. I don't like to quote figures, but I can give them to the Examiner, that might substantiate my assertion.

[fol. 964] Q. What I would like to have you state particularly, if you have the figures, the benefits which you have derived.

A. Well, I have records back to 1925; in fact, I have records further back than that but I suppose they are so old that I couldn't check them up very carefully. But I know from 1925 up until the time that the waterway was opened up, the elevator at Coal City, almost any elevator, as near as I can get, understand it, and of course I sold lots of grain. I have sold grain now for 25 years, quite a few bushels. They usually took about 9 cents on the Chicago market. That was on the Chicago cash market on grain shipped from Coal City by rail, which is located, Coal City, about 12 miles from Morris.

By Mr. Brown:

Q. Is that a hundred or a bushel?

A. That is a bushel. About three weeks ago, I asked our elevator man at Coal City for a bid on No. 2 yellow corn, and he quoted me 50 cents per bushel. I checked it up

the same day on that same grain in Chicago, selling at 56 cents. Now, this grain they bid me on was to go through the waterway at Morris. And I think you can see from that figure there that we have at Coal City an advantage of about three cents over the old bid on the rails.

Mr. Enoch: I wish you would give that again. I don't understand.

The Witness: Can't you? I thought you fellows, being lawyers and everything like that, ought to understand fig-
[fol. 965] ures like that.

Mr. Enoch: Never mind, Mr. Witness. I move those remarks be stricken from the record and I am only asking this witness to read again from the statement which he has in front of him.

The Witness: Let me put it like this, then——

Mr. Enoch: May I ask him to read the statement, if the Examiner please?

Mr. Root: I object to that. He can answer the questions as he sees fit.

The Witness: I don't care to read that. I will put it another way. It is in the record.

Exam. Taylor: We can have it read off the record. Read the statement, Miss Reporter.

(Answer read.)

By Mr. Enoch:

Q. Do you mean that bid back in 1925?
A. Yes.

Exam. Taylor: He said yes.
The Witness: Yes.

By Mr. Root:

Q. Now, proceed with your statement, Mr. Carper.
A. There is one more question enters into that. This bid that is made at Coal City usually includes—is usually made on the farm.
Q. Was this particular bid of 50 cents on the farm or at the elevator?
A. At the farm.
[fol. 966] Q. About how much is the usual cost of trucking in from that farm to the Coal City elevator?

A. The average cost, I would say, from my farms is a cent and a quarter.

By Exam. Taylor:

Q. A bushel?

A. A bushel. Some of them are under the cent and some run over, but the average cost on my farms would be a cent and a quarter from the farms to the elevator at Morris.

By Mr. Day:

Q. Will you tell us the approximate distances they cover?

Mr. Root: I beg——

Mr. Day: I just thought if he could give us that information while he is talking about that, we would have it all in one place.

Mr. Root: If the Examiner please——

Mr. Day: Strike my question.

Exam. Taylor: Strike the question. Reserve it for cross.

The Witness: There is a point I would like to bring out here, Mr. Examiner, if I may. I am representing producers. I am not representing any other class of people, because I have these farms of my own and my clients and we try to get the most we can for ourselves and our tenants. I operate these farms, practically all, on—I call it a partnership basis. We have men with us that have been there 15 years. We operate this farm on a share basis. At Coal City, the land, [fol. 967] as probably a lot of these fellows know, isn't considered so valuable, so we go on a three-fifths and a two-fifths basis.

By Mr. Root:

Q. Who gets the three-fifths?

A. The tenant gets the three-fifths; and on the better class of our farms, we get half, and it is all a partnership basis. Now, this changing of this rate is just simply going to mean, in my opinion, a great loss to thousands of farmers operating these farms up and down the Illinois Valley.

Q. Mr. Carper, can you give us some estimate in bushels of the corn, beans and oats that have been produced on the ten farms owned by you and your wife this year which will be for sale; I mean you and your tenants.

A. Yes, I am only quoting now ten farms. We produced this year, 1939,—say 20 per cent has been sold—20,000 bushels of corn, 7,500 bushels of soy beans. The beans have been practically, oh, two-thirds of them have been sold. 20,000 bushels of oats of which two-thirds have been sold. As I stated before, these farms have other things in the shape of some livestock.

By Exam. Taylor:

Q. Does that complete your statement?

A. Well, I do think that an injustice is going to be done to the producers of grain in this district. Of course, it is going to hurt somebody. But it must progress and we can't help that.

Q. That concludes your statement?

A. Yes.

Exam. Taylor: Questions?

[fol. 968] Mr. Belnap: Yes, I have a question.

Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. Did the period in which, according to your experience, the price bid you at your farm for corn averaged 9 cents less than the Chicago cash market, extend up to the period in which the movement of grain developed by the Illinois waterways?

Mr. Enoch: I object to that as a leading question. That is not cross examination. That is counsel's own witness, and I prefer the witness' testimony——

Mr. Belnap: I am a little afraid Mr. Enoch, maybe inadvertently, tried to mislead the witness. I followed his original statement and he said from the period of 1925 up to the time——

The Witness: Of the waterways.

Mr. Belnap: The waterways opened, a certain thing happened. Then Mr. Enoch had him read from the record and said, "That was of 1935, wasn't it?"

Mr. Enoch: What was of 1925?

Mr. Belnap: The 9 cents difference between the bid at the farm and the Chicago cash market.

Mr. Enoch: I asked him about the bid. He was talking about the bid of 1925.

Exam. Taylor: Now, there is an objection to the question, Mr. Belnap, because it is leading.

Mr. Belnap: May I restate it?

[fol. 969] Exam. Taylor: You can restate it to avoid that objection.

Mr. Belnap: Yes.

By Mr. Belnap:

Q. What was the period in which, in your experience, the bid for corn at your farm averaged 9 cents less than the Chicago cash price?

A. Why, it goes 'way back. I started in business as a farm manager down there in 1914. That is the average.

Q. And to what period coming in this direction?

A. Why, it lasted practically until the waterway was put in existence.

Mr. Belnap: That is all.

By Exam. Taylor:

Q. What year was that, Mr. Carper?

A. Is it about three and a half years ago, four years?

Q. I was asking you.

A. I will say three and a half years ago.

Exam. Taylor: Is that all the direct examination of this witness?

Mr. Root: I think so.

Exam. Taylor: Cross examine. Mr. Cole.

Cross examination.

By Mr. Cole:

Q. Mr. Carper, are you a stockholder in any of the river elevators?

A. No, sir.

Q. You don't have any connection with them?

A. I wanted that—tried to get that across, that I am not [fol. 970] an elevator man. I am a producer.

Q. How far is it from these farms that you operate to the nearest water elevator?

A. Oh, some of them are ten miles, some few eight miles, some fifteen miles. I have ten.

Q. Well, the average?

A. The average about ten or twelve miles.

Q. What are the truck charges from your farm to the water elevators, from the farm to the elevator?

A. They are 1 cent, say eight to ten miles.

Q. One cent a bushel?

A. Yes, sir. Out to the limit where I go, it is about 18 miles and I pay a cent and a half.

Q. Have you ever tried to sell your grain from your farm direct to the river elevator?

A. Why, sure. I deal with anybody. I am an independent farmer.

Q. Have you sold any of your grain from your farm direct to the river elevator?

A. I suppose—yes, no doubt I have.

Q. When you have sold your grain from your farm direct to the river elevator, did you also have bids from your elevator man located in Coal City?

A. Not necessarily.

Q. Well, did that happen at any time?

A. No, I don't say that it did.

[fol. 971] Q. When you sell to your elevator man in Coal City, did you at any time receive from him two levels of bids for the same grain?

A. I don't know just exactly what you mean by two levels of bids, but I don't——

Q. Well, you say——

Mr. Root: Let him explain it.

By Mr. Cole:

Q. For instance, this day you referred to when you said your elevator man quoted you 50 cents.

A. That was his bid at the farm on grain that particular day.

Q. Now, at the time that he made you that bid of 50 cents, now that was your elevator man?

A. Yes.

Q. Am I to understand that when you say that that was your elevator man, was that the elevator down at the river?

A. No, sir. That was at Coal City.

Q. That was your Coal City elevator man?

A. Yes, sir.

Q. Now, when your Coal City elevator man made you the bid of 50 cents, did you get in touch with the elevator man at the river to try to get a bid from him?

A. No, sir.

Q. The same day?

A. No, sir.

Q. You got 50 cents from him at the farm for this grain and you checked up later and found that on that same day, [fol. 972] the grain, after it had passed—that is, after it got in Chicago, was selling for 56 cents?

A. Yes.

Q. 6 cents higher than the 50 cents you got laid down on the farm?

A. Yes.

Q. That is correct. Now, have you while you have been operating these ten farms, have you at any time when you were ready to sell grain called up both your elevator men at Coal City and the elevator man at the river?

A. Why, sure, anybody does that. That is nothing more than business.

Q. When you had the grain to sell, have you called up both your local elevator men and your water elevator man at the same time, before you made up your mind which one you were to sell to?

A. Oh, not necessarily. Sometimes I sell at Coal City and sometimes I sell at Kinsman. Sometimes I sell at Morris, Allied Grain. Sometimes I sell at Finnegan Grain. I am an independent farmer, that is all.

Q. The day that you had this 50 cent bid from your Coal City elevator men——

A. Yes.

Q. That very day, before you took him up on selling to him for 50 cents, did you, before you sold it to him, check up to see whether you could get any more any place else? [fol. 973] A. No, sir, I did not.

Q. You just took his 50 cents?

A. Yes, sir.

Q. And what was the determining factor that made you take his 50 cents without checking up to see if you could get more for it some place else?

A. Well, I thought that was a pretty good bid. When a man can bid you in 6 cents of the Chicago market, I think he ought to have the business.

Q. Now, if there were some way by which you could have hauled that grain or had it hauled for you for a cent a bushel to the river elevator, if you paid that cent a bushel to haul it there and if you could have gotten 53 cents, out of which you paid the cent a bushel, would you have been ahead?

A. Oh, possibly.

Q. Now, do you understand what change is being proposed by the carriers here?

A. I believe I do.

Q. What is your understanding of the change that we are trying to make?

A. You are trying to put the ex-barge grain so that it cannot be rebilled out on the Baltimore and New York rate. Is that, in effect, what it is?

Mr. Day: No.

By Mr. Cole:

Q. Which rate?

[fol. 974] A. I am not a rate man. I am just telling you what I understand about it.

Q. What is your understanding of the effect upon you, as a farm operator, of this change, if it is permitted to go into effect? What is in your mind as to its effect on you?

A. I just believe it is going to lower our bid. Naturally, it is going, if you can't ship this grain, particularly at certain times of the year, if you can't ship this grain East without a higher rate, they are going to put the bid down to me.

Q. Then Mr. Carper, if this change that is made or is proposed would not change the price or change those factors which enter into the price that you receive for your grain, am I correct in understanding that you wouldn't have any interest in this proceeding?

A. Well, I don't know; not necessarily. I don't see why—if I was on the other side, why, I couldn't ask a question like that myself. If there is only 16 per cent of this grain going to go through certain channels, why argue about it?

Q. I wish you would answer that question.

A. Well, you have to state it over again.

Q. That you just propounded, Mr. Carper, the one you just propounded. I wish you would give us the benefit of your thought on that very question.

A. I am not going to answer a question of that kind. As I told you, I am a producer. I know from my experience— [fol. 975] I have been in this game 25 years. I hope I am a business man. I don't know that I am, but I try to make a little money on operating these farms, and I know that I am making more now than I did some three or four years ago.

Q. Now, do you understand that anything that the railroads propose here has or is going to have any possible effect upon the ability of the grain to move over the waterway from your vicinity up to Chicago?

Mr. Belnap: Mr. Examiner——

The Witness: I think it is.

Mr. Belnap: Just a moment, Mr. Witness. Counsel shouldn't endeavor to mislead the witness.

Mr. Cole: I am not.

Mr. Belnap: As I understand the proposal of the rail carriers, it is a change in rates which they hope and believe will reduce the volume of grain moving via river. That has been their story, as I understand it. Now, it doesn't seem to me appropriate that any counsel who takes that view of the case should ask a witness a question based on any other premise.

Mr. Cole: May I go off the record a minute?

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

By Mr. Cole:

Q. Mr. Carper, after this change is made that the railroads propose, will there still be available to you the water- [fol. 976] way from this origin around Coal City up to Chicago, via which route you could ship your grain on the water?

A. I believe yes, but I think I will get——

Q. That is it.

A. Wait a minute, I believe I will get less for the grain, though.

Q. And you believe that you would get less for the grain for transportation via water because of the change which we here propose?

A. That is my feeling about it. The Government has developed something down there and it looks like to me somebody is trying to throw a monkey wrench into it.

Mr. Enoch: That wouldn't be big enough.

The Witness: You want to throw a whole train wreck into it and you want to wreck it. That is the idea, then.

By Mr. Cole:

Q. Mr. Carper, you have heard the testimony here so far, you have been present, haven't you?

A. Just since 3 o'clock yesterday.

Q. Did you hear those figures put in the record to indicate how much of this grain moving to Chicago via the water was actually placed upon the proportional rates outbound from Chicago?

A. I heard some figures; I don't know whether I paid enough attention to remember them. What was it, 16 per cent, 20 per cent?

Q. 16 to 20 per cent.

[fol. 977] A. Yes.

Q. Now, you said a while ago you were a business man; you operate 10 farms?

A. I said I hoped I was.

Q. With 16 per cent of the grain that arrives at Chicago via the water, with only 16 per cent of that moving out on proportional rate, how much influence do you think that had on the price you were able to get at Coal City for your grain?

Mr. Root: Your Honor——

The Witness: I think that is a misleading question and I don't want to make an assertion to answer it, but I can't understand why if there is only 15 or 20 per cent going East on the rails, why are you going to stop it. It ain't going to make or break the railroads, the 16 or 20 per cent.

By Mr. Cole:

Q. Did I understand you to say that you couldn't attempt to answer that question?

A. I answered it my way.

Q. And did you say how much influence you thought that that would be upon your price? Would it make a difference of a cent a bushel to you?

A. I believe it would.

Q. Would it make a difference of 3 cents a bushel to you?

A. No, not necessarily.

Q. Would it make a difference of a cent a bushel on every bushel that you sold?

[fol. 978] A. I wouldn't be a bit surprised if it wouldn't, because when you change those rates and you get monkeying with that thing, you just throw everything out of kilter and those fellows will not bid up for the grain, that is all. We producers are going to be just like we always were, left sitting.

Mr. Cole: That is all I have.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Mr. Carper, are you engaged in any other business activity outside of the bank and operating these farms?

A. Nothing else.

Q. Are you interested in any other businesses?

A. I have no—I own these farms, half in my own name, half in my wife's name. I operate that little bank that I wish somebody would come around and take off my hands.

Q. Well, the answer is no?

A. No.

Q. What is the average of these 25 farms that you operate?

A. The ten that we own average—I call them 240-acre farms.

Q. That is simple enough. That is 2,400 acres?

A. Yes. The others average, the fifteen average about, as near as I can remember, 100 to 120.

Q. You gave, I think, the production of corn and beans on these farms that you operate, did you not?

A. Just the ten farms.

Q. Just the ten. And what was that figure?

[fol. 979] A. 50,000 bushels of corn this year, 7,500 beans and 20,000 bushels of oats.

By Mr. Brown:

Q. Was beans 10,500?

A. 7,500.

Q. I thought it was ten.

A. We don't go in very heavily on beans. We probably will next year. The prices went up this year and we hope they will stay up.

By Mr. Day:

Q. Are you able to say what the production on the other farms was, approximately?

A. Well, you know the small farms can't be operated—oh, I sell all the grain for these other parties, oh, I would say we would get 25—say 20,000—of corn and 10,000 of oats, you understand——

Q. That is just roughly?

A. Yes. We don't have much beans on these farms.

Q. Now, taking up these ten farms first. How many are located within a radius of, say, five miles of Coal City?

A. Five of them.

Q. And near what points are the others located?

A. Part of them are northwest of Morris and part—do you know where Kinsman is on the Santa Fe?

Q. Yes.

A. Three of them are south of Kinsman and two north—I mean two south and two north of Kinsman.

[fol. 980] Q. Do you have any near Braceville or Braidwood or Wilmington?

A. No, sir.

Q. The most distant from Coal City is how far?

A. About 18 miles.

Q. How far are thes- 15 farms that you operate from Coal City?

A. Oh, they average—part of them are 15 miles and there is one 21 miles and five of them are just a couple of miles.

Q. 21 is about the most distant is it?

A. It is, yes.

Q. And running through this territory, where these farms are located, are quite a number of railroads, are there not?

A. Yes, sir.

Q. You are not far from Manhattan, are you?

A. I am in Grundy County. Don't confuse me with Will County, or anything. These farms are all in Grundy County. The Rock Island and the Santa Fe is our shipping lines.

Q. Isn't Coal City in Will County?

A. No, sir, it is in Grundy County.

Q. It is close to the line, isn't it, then?

A. It is just one mile or two west of the Will County line.

Q. How long has it been since any of this grain produced on your 25 farms was hauled to a railroad elevator?

A. Oh, every once in a while there is some grain probably hauled to the elevator, even now.

Q. I am trying to find out how long since you had any [fol. 981] such shipments.

A. In large amounts?

Q. In carload lots.

A. In large amounts, it has been—it is just gradually since the waterway started.

Q. In 1925?

A. Gradually, since it started, and there has been more competition, why, the business has gone to the waterway since it started.

Q. I see. Now, you are not very far from Joliet, are you? About twelve miles or so?

A. 24 miles.

Q. 24 miles?

A. Yes, sir.

Q. To what elevator is your grain sold on the river?

A. Both elevators?

Q. Both elevators in Morris?

A. Yes, I told you I was an independent business man.

Q. You make the sales direct to the elevator on the river?

A. I sell direct sometimes, but usually quite a bit of the grain goes through, as I said before, and I got the 50 cent bid and it was only 6 cents below the Chicago market; the local elevator man got it.

Q. The local elevator man at Coal City?

A. Yes, sir.

[fol. 982] Q. And he handled the transaction?

A. Yes, sir.

Q. Although he didn't actually handle the grain, he took care of the buying and selling for you?

A. His trucks, the trucks that he hired took the grain wherever he wanted it. I didn't ask him where it went.

Q. I mean it wasn't handled through his elevator?

A. I wouldn't say necessarily it wasn't handled through his elevator. Sometimes the river elevators get blocked up and they have to fill up the local elevators.

Q. Is his elevator being used for Government corn storage?

A. I believe not.

Q. Is his elevator in operation at the present time?

A. Yes, sir.

Q. When you talked about trucking to Coal City for a cent and a quarter, you didn't mean to give the impression that there was actually trucking to Coal City being done from your farms? That is what the charge would be if there were any?

A. Well, you probably didn't—maybe I didn't make myself clear. When I said a cent and a quarter, I meant that the elevator man in Morris—it depends upon the distance that the particular farm is from the waterway. Sometimes it is a cent and sometimes it is a cent and a half, so my farms average, it would average about a cent and a quarter.

Q. To the elevator at Morris?

A. Yes.

[fol. 983] Q. In your direct, as I understood you, you said that the trucks would haul the grain from your farms to Coal City for about a cent and a quarter.

A. Well, I think they would.

Q. Now, it was at that point that I wanted to find out from you what these distances were to Coal City and your counsel objected and said that I should reserve that question to the cross examination. Now, I find that what you had in mind was the trucking to the elevator at Morris.

A. All right, I will go——

Q. Isn't that right?

A. Yes, sure.

Q. Now, are these 15 farms that you operated, that you are operating, farms that came to the bank because of mortgage foreclosures?

A. No, sir.

Q. None of them are?

A. None of them.

Q. Are they farms that are being operated because of foreclosures and you are operating them for somebody else?

A. No, sir.

Q. Have the owners had title to these farms for a considerable period of time?

A. Yes.

Q. And there has been no foreclosure in connection with them?

[fol. 984] A. No, sir.

Q. How about these ten farms that you own, did you acquire any of those under foreclosure?

A. No, sir.

Q. Did your wife?

A. No, sir.

Q. You are sure of that?

A. Yes.

Mr. Day: That is all.

Exam. Taylor: Mr. Enoch.

By Mr. Enoch:

Q. Well, did you get them from anyone who had just acquired them under foreclosure?

A. There is possibly one, and I paid a whale of a price for the land, too. I should have let somebody else have it.

Q. How long have you been in Coal City?

A. Just before the World War started; just before 1914. Some time in 1913, latter part of 1913.

Q. Where was your home prior to that?

A. Chicago.

Q. Chicago?

A. Yes, sir.

Q. Have you lived in Chicago all your life, prior to then?

A. No.

Q. Prior to your living in Chicago, where did you live?

A. Well, I don't think that has anything to do with this [fol. 985] case, do you, Mr. Examiner?

Mr. Enoch: All right, I will leave it right there. That is all I have.

Exam. Taylor: Anything, Mr. Brown?

By Mr. Brown:

Q. Mr. Carper, as I understand your testimony, you do not ship yourself from Coal City, your own grain from Coal City by rail to Chicago or from Morris by water to Chicago?

A. No.

Q. You sell it to them on any bid and deliver it there and then you are through with it?

A. Absolutely.

Q. And you don't know what happens to it after you have got your money and delivered it?
A. No, sir.

Mr. Brown: That is all.
Exam. Taylor: Anything further of this witness? Anything on redirect?

Redirect examination.

By Mr. Root:

Q. Mr. Carper, you might tell these gentlemen who owns most of these 15 farms, or all the 15 farms you operate.
A. I don't know that it makes any particular difference.

Mr. Brown: Does he want to sell them?
The Witness: No, we are using them up for strip mines.

By Mr. Day:

Q. For strip mines?
[fol. 986] A. Yes.
Q. Coal City is in the heart of the Wilmington coal district?
A. Yes, and the Santa Fe Railroad ought to be glad they are there.
Q. They certainly ought to be glad to get some business.
A. Well, they sure do get business.

By Mr. Root:

Q. As a matter of fact, you are farm manager for the Northern Illinois Coal Company and you operate it for them, you operate it until the time——

Mr. Day: Wait a minute, he said he had no other business connection. Now, you are saying he is the manager of the Northern Illinois Coal Company.
Mr. Root: No, I said he managed these farms. I am trying to help you out on it.
Mr. Day: You are making statements that the witness would not make himself. I asked him if he had any other business connections.
The Witness: I haven't. I operate these 15 farms. There is one outside that doesn't belong to the coal company. There are ten of my own, one that belongs to some

relation of my wife. There is about, oh, maybe there is 16 coal companies on it.

Mr. Day: But as Mr. Root suggested, you are manager for the Northern Illinois Coal Company.

The Witness: Their farm manager. I have nothing to [fol. 987] do with the operation of the mines.

Exam. Taylor: Did you finish?

Mr. Root: No, I want to ask one more question.

By Mr. Brown:

Q. Do you lose your job when they start to mine coal, Mr. Carper?

A. No, several people tried to get the little job away from me.

Q. But I mean when they start to mine coal, you lose your job?

A. No, they buy this land, pay for it. They turn it over to me to farm it. I farm it just like it was my own and get the receipts and turn them in to the Chicago office.

Mr. Root: Are you satisfied, Mr. Day?

Mr. Day: I am satisfied you brought out he did have some other business connection he withheld from me.

The Witness: That is absolutely wrong.

Exam. Taylor: Off the record.

(Discussion outside the record.)

By Mr. Root:

Q. Mr. Carper, you stated that you sold some grain to a river elevator at Morris. Is any of that sold to the Allied Group or Co-operative Grain Dealers Association in Morris?

A. Not direct, no.

Q. Who do you sell to in Morris?

A. I sold it to the Farmers Square Deal. I have sold to Finnegan Grain Company.

[fol. 988] Q. But you have never sold any grain directly to the Co-operative Allied Grain Dealers Corporation?

A. No, sir.

Mr. Brown: That raises another question.

Recross-examination.

By Mr. Brown:

Q. Did you have to deliver it to the Allied Co-operative Association's elevator at Morris?

A. I didn't sell it to them. I sold it to the local elevator out in the country and he done whatever he wanted to with it.

Q. To whom did you deliver the grain?

A. Why, to the elevator. I didn't deliver it—the bids. Now, some of these little elevators, you take at Kinsman, the Dunne Elevator Company, he bids me today—I don't know what the market is today. Say he bids me 51 cents for No. 2 yellow corn. That is on the farm. I don't know what he does with it, necessarily. I am not interested in it as long as his credit is good, that is all I am interested in.

By Exam. Taylor:

Q. So the answer is, you deliver the grain to trucks on your farm?

A. Yes.

Q. Whoever buys it brings a truck in and takes the grain there and that is the end of the transaction, as far as you are concerned?

A. Yes.

Exam. Taylor: Does that answer your question, Mr. Brown?

[fol. 989] Mr. Brown: Yes, but I would like to know on what basis does he get this 51 cents, based on the outturn weights or the delivered weights at Morris elevator, where the grain is delivered, to Finnegan's elevator or some other elevator.

The Witness: If it is delivered at Finnegan or the Allied or his own elevator, I take the weights that he certifies.

By Mr. Root:

Q. Whose check do you get in payment of that grain?

A. If I sold it to the Dunne Elevator Company?

Q. Yes.

A. I get their check.

Q. You get the Dunne Elevator Check?

A. Absolutely.

Q. If you sell it to the Square Deal Grain Company, whose check do you get?

A. Square Deal's.

Q. If you sell it to Treasure, whose check do you get?

A. That is Bookwater.

Q. Or Bookwater?

A. I get Bookwater's check.

Exam. Taylor: Any further questions on redirect?

By Mr. Cole:

Q. Did I understand you correctly to say you sold to the Finnegan Grain Corporation? Do they have a buying agency or an elevator right near you at Coal City?

A. No, sir, they have a grain elevator in Morris.

[fol. 990] Q. And you have sold some grain to this Finnegan Grain Corporation?

A. Why, sure.

Q. And when you sold to them, did they too send the trucks to your farm to get the grain?

A. Not necessarily.

Q. Well, have you ever hauled grain or had grain hauled from your farm direct to the Finnegan Grain Corporation at Morris, Illinois?

A. Morris, Illinois? Sure.

Q. You have had grain hauled, then, from your farm?

A. Why, sure.

Q. Direct to the elevator at Morris?

A. Yes.

Q. That you sold to the Finnegan Grain Corporation?

A. Sure.

Mr. Cole: That is all.

Mr. Brown: Mr. Cole, I believe on the record, that elevator is sometimes known—located at Patonville, is that right?

Mr. Root: For the purpose of the record, it might be well to state that it is the same.

Mr. Brown: Patonville and Morris are the same?

Mr. Root: Patonville is an unincorporated town on the south bank of the Illinois River.

[fol. 991] Mr. Brown: And that is where Finnegan & Company's grain elevator is located?

Mr. Root: It is not there, but it is near there.

Exam. Taylor: Is that all from this witness? (No response.) Witness excused. Thank you.

(Witness excused.)

Exam. Taylor: We will recess until 2 o'clock.

(At 12:30 o'clock P. M., Thursday, December 21, 1939, hearing adjourned until 2 o'clock P. M.)

[fol. 992] Afternoon Session

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Taylor: All right, gentlemen, let us come to order. Next witness.

Mr. Root: I call Mr. Hatcher.

Paul Hatcher was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. Paul Hatcher.
Q. Where do you reside, Mr. Hatcher?
A. Morris, Illinois.
Q. In town or near the town of Morris?
A. Near the town of Morris.
Q. As a matter of fact, about a mile or a mile and a half west of town?
A. That is right. Our farm land runs up to the city limits.

Mr. Brown: Does that make you a farmer?
The Witness: Yes, sir.

By Mr. Root:

Q. And farming, is that your business and occupation?
A. That is right.

Q. Are you engaged in any other line of endeavor?
[fol. 993] A. Farm management and farming and livestock raising, is all.

Q. Do you feel that you have an interest in this case here today?

A. I do.

Q. And have you prepared a statement which you would like to make in order to expedite the hearing?

A. That is right.

Q. Will you proceed and make your statement?

A. I have prepared a statement, Mr. Examiner, and this is regarding to the history of our farm, which we got from the United States government under original land grant and which was signed by the President of the United States and dates back to 1831 and I would like to read this statement, if I may, without any interruption and afterwards I will be glad to answer any questions that I can, just to hurry this thing along.

Mr. Brown: Before you start, was it your great grandfather that got that land?

A. Great, great.

Q. Great, great grandfather?

A. Yes, sir.

Mr. Brown: All right, go ahead.

The Witness: In the late 1820's Josuah Hoge and his two sons, traveling over land on horseback, rode into what is now Grundy County and staked out their claim. This land bordered by the Illinois River to the south was [fol. 994] selected by them for its fertility and adjacency to the river, which body of water as early as the seventeenth century was used as a means of entry into unexplored country. Three years later, in 1831, they brought their families by covered wagon to this early homestead. Here, high on a timbered hill, they built their home overlooking the cleared fields of river bottom land and the Illinois River which they expected to furnish a valuable means of exportation of produce and importation of necessities. However, by 1836 work was begun on a canal to be known as the Illinois and Michigan canal, which was to serve as a cheaper and surer means of transportation. After delays of several years due to a lack of funds work was renewed in 1846 and in April of 1848 the canal was open

for navigation. Again Josuah Hoge's choice of land was vindicated, for the canal bordered on the north of his vast corn fields and it ran not 25 rods from his house. By this time the home place was managed by Josuah's oldest son, Isaac and his wife, Mary Jane. As day by day loaded barges moved up and down the canal and the towpath became well trodden by the laboring mules, Isaac conceived the idea of building a granary in which to store grain bought for reshipping via this direct and inexpensive waterway. He chose a site north and above the canal bank, easily accessible to unloading by oxen, mule or even force of gravity. For many years the well filled barges passed by the farm laden with grain for markets in Chicago and even farther east and the farmers profited by this means [fol. 995] of shipping with its accessibility and low rates. As the granary filled and emptied Isaac Hoge improved his own farm and that of his tenants. Early in the 1850's news arrived of the chartering of a railroad to run direct from the Mississippi River at Rock Island to Chicago. Again Isaac's land was invaded by working crews. This time a narrow strip of land through his farm was surveyed and leveled, ties were laid and rails spiked. In July of 1854 the Chicago, Rock Island Railroad opened. Cognizant of the greater speed and recognizing a forward move in transportation, some of the farmers began shipping by rail. As the railway service developed commerce was diverted from the canal. Fewer and fewer barges passed by the house and more and more of the grain was shipped by rail. The farm passed into the hands of John Hatcher, husband of Isaac and Mary Jane's daughter Caroline, and thence to their son Frank. By now business on the canal was negligible and when Frank Hatcher died in 1930 the canal as a means of transportation was non-existent; the canal bed was shallow and muddy and the old towpath overgrown with underbrush. In 1908 I think the last barge of grain was shipped from Morris by the canal by a farmer named Collins. But its successor, the railroad, was far from satisfactory. True, the service was rapid but the rates, so we farmers felt, were unreasonably high. Again we turned to our old ally—water. The canal was out of the question but what of the river? Could not transportation by river be made practicable? Recognizing the necessity for [fol. 996] such a change the Illinois Deep Waterway came into being. Back to shipping by water went the farmers,

water with its cheaper rates and along the Illinois River at the various towns local elevators were built handling millions of bushels of grain yearly, local businesses were made possible by the deep waterway. Working with the waterway is the recently developed trucking business. In conjunction the two can offer the farmer more satisfactory and more reasonable shipping into and through Chicago. Water had been the most satisfactory method for past generations and it is found to be so today. Through the decades the original Hoge lands have been split up among the several heirs but the early homestead remains and is now owned and occupied by me. From my farm proper are shipped on a yearly average some 10,000 bushels of corn. Water was originally the most practiced method of shipping for the farmer and still proves itself to be. The railroad has served a useful purpose in developing the Illinois valley but as it drew the business away from the Illinois and Michigan canal so must the railroad in part, at least, give up to the newer and cheaper mode of transportation, the truck and the Illinois waterway. My farm has been here for over one hundred years. It has seen the explorers, the pioneering homesteaders, the rise and decline of the Illinois and Michigan Canal, the penetration of the railroad, the return to water. From the original home you can today look beyond the obsolete canal to the Illinois River where daily barge convoys carry the farmers' prod- [fol. 997] uce upstream and downstream to the markets.

By Mr. Root:

Q. Now, Mr. Hatcher, is that grain now produced on your farm, as you state, an average of 10,000 bushels of corn per acre?

A. A year.

Q. 10,000 bushels a year. That would be a nice farm. Have you sold that during the past three or four years to operators who ship it to Chicago by water?

A. Yes.

Q. Have you noticed any appreciable advantage in price as a result of that transportation?

Mr. Enoch: I object unless he cites the basic factors from which he announces his conclusion.

By Mr. Root:

Q. All right, cite the factors? Has there been any advantage in price to you during the past four years?

Mr. Enoch: I object except as the answer is based upon specific factors from which the Commission may draw a conclusion.

Exam. Taylor: Can you go back a few years and show what it was and bring it up to date?

By Mr. Root:

Q. And as compared with the Chicago cash grain market will you compare the price which you have received in Morris during the past three or four years as to what it was before the Illinois waterway was useable?

A. I believe that my farms and the farms that I operate have benefited to the extent of between four and five cents a bushel.

[fol. 998] Mr. Enoch: I move that that answer be stricken.

Exam. Taylor: It is hardly responsive to your counsel's question.

Mr. Root: Read that question to him again and try to answer the question, please.

The Witness: Yes, I had a couple of interruptions there.

(Question read.)

Q. I am speaking of the price of corn, of course. In other words, how much closer, if at all, are you getting to the Chicago cash grain market than you did before you had the waterway facility there?

A. Well, I think before we had the waterway facilities,—I think now we are about four cents——

Exam. Taylor: No. He asked you before you had the waterway facilities what was the difference between the price you got at your farm and the price that the corn was selling at on the Chicago exchange?

The Witness: About nine cents approximately.

Exam. Taylor: All right.

By Mr. Root:

Q. And what is the difference now since grain can be shipped over the waterway, Illinois waterway from Morris?

A. Well, I think it is about—the difference is about 4 cents.

Q. No, I mean—pardon me.

Mr. Enoch: Those answers are not responsive to the question. In the first place, I don't think this witness ships [fol. 999] over the waterways. At least, he has not said that he did.

Exam. Taylor: Can you develop that, Mr. Root?

Mr. Root: Yes. I asked that question once.

Q. Has the grain that you raised on your farm during the past three or four years been shipped to Chicago over the Illinois waterway?

A. I answered that before that it had.

Mr. Enoch: My point was that he hasn't said that he ships grain over the Illinois waterway.

The Witness: Well, I have shipped the grains over the Illinois waterway.

By Mr. Root:

Q. Just a minute. Do you personally ship it or do you sell it to a dealer who in turn ships it?

A. I sold it to the grain dealer in Morris and it was shipped over the deep waterway.

Mr. Enoch: You ought to be interrupted more than you have been, I suspect, to keep you straight.

By Mr. Root:

Q. Well, now, have you sold any grain this fall, Mr. Hatcher?

A. Yes, I have.

Q. Can you state the difference between what you received for that grain in Chicago and what the Chicago cash market was at that time?

Mr. Enoch: I object. The ground of my objection is this, that if there is any merit in that question it should [fol. 1000] be based upon a question directed to what he did sell his grain for and what the Chicago cash price or future price was at the time he sold it.

Mr. Root: I don't see that that is material. It is a matter of difference there.

Exam. Taylor: Well, I think they have been pretty kind to you. I think you can develop that easily enough if you wish.

By Mr. Root:

Q. At what price did you sell that corn?

A. The day before yesterday I sold Mr. Allen of the Farmers Square Deal elevator, 2,000 bushels of corn for 53½ cents a bushel. That was after the market closed. That same night,—I have a farm in Beaverville, Illinois,—over the telephone that was, after the market closed, I sold 1800 bushel more or less,—both of these was more or less,—at the price of 50 cents. That is off the deep waterway and they are both 65 miles from Chicago.

Mr. Day: Yes, but Beaverville is near the Illinois-Indiana state line, isn't it?

Mr. Root: Just a minute.

Q. Was the grain from the Beaverville farm shipped to Chicago by water or rail?

A. Rail.

Q. Or shipped to market, wherever it was shipped, if you know?

A. Rail. They have no water facilities over there.

Q. They do have water facilities in Morris?

[fol. 1001] A. That is right.

Exam. Taylor: Is that all?

Mr. Root: I believe that is all.

Exam. Taylor: Any questions by counsel?

Mr. Belnap: I have none.

Exam. Taylor: Cross examine. Mr. Cole?

Cross-examination.

By Mr. Cole:

Q. Mr. Hatcher, you related the fact in your direct that that farm had always been located on what you termed the cheaper water transportation facilities, didn't you?

A. I said it was located on the Illinois River, yes, sir.

Q. Do you understand that anything that we do here will defeat your right or ability to handle that grain from Morris up the waterway facilities to Chicago?

A. I don't know what will happen but I hope nothing happens to it.

Q. During the total time that that farm has been in your family's possession, and is there not still existing the possibilities of lake transportation from Chicago over the Great Lakes system to the east?

A. Well, I imagine there is possibilities there. The water is there.

Q. Is that form of transportation not that same form of cheaper water transportation to which you referred in your direct testimony?

[fol. 1002] A. I don't know anything about transportation rates on water or railroads. All I know is that we have been very happy to be able to get more money for our grain by shipping it on the deep waterway from our farm.

Q. Then no matter what the railroads do can you conceive of there being denied you the opportunity of moving your grain from Morris over the Illinois waterway to Chicago and then moving your grain or route that grain to move over the Great Lakes system and the Welland Canal clear out east over water all the way?

A. Well, I don't know anything about. I wouldn't——

Q. Well, can you conceive of the railroads being able to defeat the possibility of your grain moving that way?

A. Well, I can't answer that. I am just a grain producer. I don't know anything about railroads or any other kind of shipping or anything like that. I am not interested in that.

Q. Do you know whether the cost of transportation today beyond Chicago is—do you know whether it is cheaper or more expensive east of Chicago via water than it is by the use of this rail rate that we are talking about?

A. All I know is what I have heard since I have been sitting here to testify, just what I have heard in this room, that is all I do know or did know before I came up here.

Q. Then you are unable to say whether it is more expensive to handle it east of Chicago via water?

A. That is right.

Q. You don't know whether it is or not?

[fol. 1003] A. That is right.

Mr. Cole: That is all, thank you.

By Mr. Day:

Q. How many acres do you operate at Morris?

A. Well, sometimes I operate more than others but I live on one farm of 600 acres.

Q. That is the original family farm, I understand?

A. That is right; and I operate sometimes six or seven other farms, sometimes four or five, and they are all good sized farms that will average about 350 acres.

Q. You operate these six or seven farms for other people?

A. Our family.

Q. They are all members of your family who are living in the city now?

A. Well, yes, away from home.

Q. These six or seven other farms were acquired since the original patent from the government to your great, great grandfather?

A. Yes.

Q. Now, you say that you own a certain property at Beaverville, Illinois?

A. Yes, sir. We have owned that since 1878.

Q. And Beaverville, of course, is directly south of Chicago, 65 miles, about, as you have stated?

A. Approximately, yes, sir.

Q. And pretty close to the Indiana-Illinois state line?

[fol. 1004] A. That is right.

Q. Yes. And Beaverville is in the heart of a very good grain producing section, isn't it?

A. With the exception to the east it is very poor. That used to be an old lake bottom and it is wet. That is where those great, big drainage ditches go through.

Q. Well, it is pretty good along the Big Four Railroad which operates through Beaverville, there is very good farming country? You take all that from the south of Kankakee through Beaverville and St. Anne, Donovan and Iroquois, that is very good country, isn't it?

A. I would say it was average, yes, sir.

Q. And you are selling grain off that Beaverville farm from year to year, you say?

A. I sell some, yes, sir.

Q. Now, do you own other farms besides that one?

A. That is the only farm we own in Iroquois County, yes, sir.

Q. Well, do you own some in Will County?
A. No, just Grundy County and Iroquois County.
Q. And Vermilion County?
A. No. Just Grundy County and Iroquois County.
Q. And where you sell the corn produced on the Beaverville farm you haul it to the elevator in town there, do you?
A. You mean me personally?
Q. No.
A. We sell it.
[fol. 1005] Q. Your representatives, whoever they are.
A. Yes. Well, we sell that—I sold that over the telephone like I told you a minute ago, the other night and my tenant handled it. He has to hire the trucks and have it hauled to the elevator, to the local elevator in Beaverville.

Mr. Day: Off the record.

(Discussion outside the record.)

Q. Now, you say that from this Beaverville farm the grain is taken to the country elevator on the railroad?
A. That is right.
Q. And it is shipped out by rail?
A. That is right.
Q. Now, in the case of this particular sale that you made at Beaverville a few weeks ago, do you know where that grain went?
A. No, I do not.
Q. Whether it went east or south or north? You have no idea?
A. No, I have no idea at all. You see, that was handled by the local elevator man there.
Q. Your interest in it ended when you sold it to the elevator?
A. That is right.
Q. And by the same token doesn't your interest in your river grain end when you sell it to the elevator?
A. That is right. I don't know where the corn goes. I sell it and get the check and do something with it.
Q. Now, as I understand it, you received a different price [fol. 1006] at Beaverville from what you did at Morris?
A. That is right.
Q. And what were those prices?
A. 50 cents at Beaverville.
Q. Yes.

A. And 53½ cents at Morris.

Q. On the same day?

A. Yes, and after the market had closed.

Q. Well, did you get the market for that day or for the next day, do you know?

A. I don't know.

Q. Was there a fluctuation over-night, do you know?

A. Well, as I understand it—I don't know very much about the Board of Trade, but they closed. After it is closed I think it is closed. There isn't any fluctuation after the market is closed.

Q. Well, what I mean is do you know what the close of the market was on that particular day in Chicago?

A. No, I don't, no, sir.

Q. And what was the date?

A. Day before yesterday.

Mr. Root: December 19th.

The Witness: Yes.

By Mr. Day:

Q. You are not able to say, I take it, whether the sale at Beaverville or Morris was made on the market for that day or for the following day?

[fol. 1007] A. No, I cannot.

Q. Do you know the ordinary practice in the trade?

A. No, I do not.

Q. You don't know whether they give you that day's price or the next day's?

A. Oh, they would have to give you that day's price but they must have—I don't know what market the corn was sold on.

Q. There may have been a fluctuation that would make a difference in the price on one day and the next, might there not?

A. There might have been but it would affect both towns, would it not?

Q. Well, it depends on how they do business at each place, doesn't it?

A. I don't know how they do business. All I know is—you asked me what the price was and I told you I sold it after the market had closed.

Q. Well, don't you know what price you would ordinarily get in a case like that, where you sell it after the market is closed?

A. All I know is when I ask the local elevator what he is bidding for corn?

Q. What grade of corn was sold in each of those cases?

A. I can't tell you because it had to grade 2 or better to get the price that I sold it at, see. That means—that 53½ cents meant that the corn would have to grade at least 2. Of course, after that they dock you for it.

Q. How about this corn at Beaverville?

[fol. 1008] A. The same thing. That is the understanding, that it grades two or better to maintain that price.

Q. The prices you ultimately got were these figures that you stated?

A. Sir?

Q. The prices you actually got were the figures that you just stated? There was no docking was there?

A. Well, you see, I sold that corn and I immediately came up to Chicago and I have been here ever since. I don't know what it did grade.

Q. They may have docked you something under the figures that you gave?

A. Well, it is possible but under the conditions that we have had this fall all grain has graded well up there. In fact, I sold some grain that graded number 1.

Q. Is your land in Morris along the river bank?

A. Yes.

Q. Might there be some difference in the quality of the corn in both sections?

A. On the river bank the corn graded better this year.

Q. Yes.

A. Yes, sir. I sold——

Q. So that it might have been a better quality of corn?

A. The corn quality will be the same in both places, should be the same in both places. Yes, sir, it could be.

Q. Well, you say you raised an exceptionally good qual-

[fol. 1009] ity of corn along the river this year?

A. We have, yes.

Q. Along the river?

A. Not along the river but every farm. This was a wonderful corn year. All our corn has graded 2 or better that I have sold so far.

Q. When will you know what the result of the grading is as to these two lots of corn?

A. As soon as I get back home and find out from those local elevators, or when they send you a check. Like Beaverville, they always tell you what your corn graded.

Q. At the present time you don't know positively what price you got for these two lots of corn?

Mr. Belnap: Mr. Examiner, I suggest that question has been asked and answered more than once.

Mr. Day: I just want to make sure I am clear.

Mr. Belnap: He says he doesn't know until he gets back home.

Mr. Day: I understand that when it is graded there may be some docking on account of the grade.

Exam. Taylor: He said that.

Mr. Day: Just so I am clear on that.

Q. That is the fact, isn't it?

A. I have answered that. Yes, that is it.

Mr. Day: That is the fact. That is all.

Exam. Taylor: Mr. Enoch?

[fol. 1010] By Mr. Enoch:

Q. How much grain have you personally shipped via the Illinois and Michigan canal?

A. None.

Q. How long ago did you start shipping grain on your own account?

A. Since my father died in 1930.

Q. Well, how long have you been familiar with any operations on the Illinois and Michigan canal?

A. You see, before I mentioned in this that year 1908 and I was eight years old then, the last barge went through, so I haven't been very familiar personally with it.

Q. Where did that barge come from and go to, do you know?

A. This barge, the last barge that went out of here that I told you about, in 1908, was locally owned and it went in to Chicago. The load of grain, that was a load of grain that originated on this man's farm and he happened to own the barge, too, and it went into Chicago.

Q. How many bushels was that?

A. I couldn't tell you.

Q. Well, was it a thousand or two thousand?

A. Oh, no, it would be, I imagine—I am kind of taking a guess at this, I wouldn't be held for this, but I think it would hold approximately 5,000 bushels of grain.

Q. 5,000. Now, you said that back in 1836, when they built this Illinois and Michigan canal, that it provided cheaper transportation. From where and to where and [fol. 1011] cheaper than what other kind of transportation?

A. Well, our family have shipped grain by oxen and hauled it to Chicago. It was pretty expensive and slow.

Q. You mean prior to 1836?

A. Well, I don't know the date. And the canal,—you know they had pretty good service for its day. It was towed by mules and they had good service. You see, these granaries were built on the canal and they were built up high and they unloaded right from a wagon and that from there it ran down into the barge with very little labor bill attached to it, practically the same thing they are doing now, only they mechanically raise the grain.

Q. What you intended to say was that in 1836, after the Illinois and Michigan canal became available as you say, you could get your grain cheaper to Chicago than you could by taking it up by oxen?

A. Oh, yes.

Q. That is what you meant to say?

A. Yes.

Mr. Root: May I say something, Mr. Examiner? 1836 is not right. It was 1846 when the canal was built.

The Witness: I gave him the correct date on that before. I noticed him say that. In 1836 the canal wasn't finished.

By Mr. Enoch:

Q. What do you say in your statement there about 1836, cheaper transportation?

[fol. 1012] Mr. Root: That is when it was started.

A. That is when it was started. However, by 1836 work was begun on a canal to be known as the Illinois and Michigan canal, which was to serve as a cheaper and a surer means of transportation.

Exam. Taylor: That is sufficient.

By Mr. Enoch:

Q. Well, it was cheaper in 1846 then?

A. And in April, 1848, the canal was opened for navigation.

Q. 1848?

A. Yes, sir.

Q. Now, the statement read then, that you referred to, to the year 1848, transportation via the Illinois and Michigan canal, grain from Morris to Chicago was cheaper than if you brought it in by oxen?

A. Yes, sir, that is right.

Q. And then the railroad came along?

A. That is right.

Q. And did your ancestors continue to use the Illinois and Michigan canal after the railroad began service from Morris to Chicago?

A. We used the deep waterway——

Q. Just did your ancestors now, that is all I am talking about.

A. That is what I mean when I say "we." All right, my ancestors used the canal till the railroad broke them.

Q. Yes. Did you use the railroad?

A. Yes.

Q. How long did you use the canal after the railroad had [fol. 1013] service from Morris to Chicago?

A. Well, I imagine we used it till about 1900.

Q. That is based on your imagination?

A. I don't have the records for sure, no, sir.

Q. And the railroad broke the canal or broke your ancestors?

A. No, it didn't break our ancestors but it stopped the shipping on the canal.

Q. Why?

A. Because of railroad transportation.

Q. Was cheaper?

A. Faster.

Q. Was it cheaper?

A. I don't know about that, whether it was cheaper.

Q. You don't know whether it was cheaper or not?

A. No, I do not.

Mr. Root: I might suggest I will send up the history of Grundy County if counsel would like to read it.

Mr. Brown: You had better look out. He is a farmer boy himself.

By Mr. Enoch:

Q. I am not sure whether you stated whether this 53.5 cents per bushel that you got on the 19th day of December was an f.o.b. farm price or an f.o.b. river elevator price.

A. That was at the farm.

Q. To whom was that sale made?

[fol. 1014] A. To the Farmers Square Deal, Morris, Illinois.

Mr. Enoch: That is all.

Exam. Taylor: Mr. Brown?

By Mr. Brown:

Q. Mr. Hatcher, are all the prices that you get for your corn raised on your farm in Grundy County near the river by the bids at your farm rather than through the elevator?

A. They have been in the last,—oh, I would say two years.

Q. Well, now, this bid that you got, 53½ cents, for what would be number 2 yellow corn or better, on the 19th instant, December 19th, did you get as good a bid as that at any time in December prior to December 19th from the Square Deal or the Allied?

A. Will you please state the last half of that again?

Q. Yes. Have you had as good a bid or a better bid than 53½ cents at any time during this month prior to the 19th from either the Square Deal or the Allied?

A. Well. I really didn't get a bid from them. I went in there and asked the price of grain, I have been watching it kind of close, naturally, and when it hit 53½ cents I sold it.

Q. All right. Have you sold any grain to either one of those two people at any time prior to December 19th that netted you better than 53½ cents?

A. No.

Q. Did you have any that netted you within a cent of 53½ cents?

A. No.

Q. Did you have any that netted you within a cent and a [fol. 1015] half of 53½ cents?

A. No.

Q. Two cents of 53½?

A. No.

Q. What was the best bid that you had prior to December 19th during the month of December this year?

A. I sold some grain to make space, I think it was the last of November, I don't know; I sold some 6,000 bushels of corn at 46 cents. Is that what you meant, Mr. Brown?

Q. Yes. Of course, that happened to be in November instead of December?

A. That is right.

Q. Late in November, I presume?

A. That is right.

By Exam. Taylor:

Q. To whom was that sold?

A. The same elevator.

Q. The Morris elevator?

A. Sir?

Q. The Morris elevator?

A. Yes, the Farmers' Square Deal at Morris, Illinois.

By Mr. Brown:

Q. Now, you took us back, you know, to ancient history, back to the oxen and covered wagon days. And beginning in 1848 you could ship via the Illinois and Michigan canal, at least your forebears did?

A. Yes.

[fol. 1016] Q. Now, what makes it possible for you to use the Illinois—that is, your grain is shipped now,—what makes it possible for transportation over this Illinois waterway of your corn today after this lapse of years from, say, 1900 up to, say, 1939? What means has brought that about?

A. Well, I guess the railroads.

Q. Oh, no. I am talking about shipping over the Illinois and Michigan——

A. I don't quite get your question clear, I guess.

Q. Well, I will make it plainer. Where did the money come from that made transportation possible on the Illinois waterway that is now used in the transportation of your corn to some place,—Chicago or some place?

Mr. Root: Your Honor, I object. It is outside of the scope of the direct.

Mr. Brown: I am talking about after the Illinois and Michigan canal.

Mr. Root: I have got no objection but it has nothing to do with his direct examination.

Mr. Brown: If he doesn't know it is all right.

Mr. Root: He knows.

The Witness: As I understand the situation, about twenty million dollars went into the deepening of the Illinois waterway and then when their funds ran out the United States government took it over as a federal project and finished it in about the year 1934.

[fol. 1017] By Mr. Brown:

Q. And the expenditure of that money made it possible for somebody to buy your grain and ship it by water is that right?

A. That is right.

Mr. Brown: That is all.

Mr. Day: I have just one question I would like to ask the witness.

Mr. Root: I would like to have him on redirect first.

Mr. Day: This is just one question on cross that I omitted to ask.

Q. Did you have any government loan on your corn during 1939?

A. No.

Q. 1938?

A. I have never had a government loan.

Q. Never had any?

A. No.

Mr. Brown: He doesn't need any.

By Mr. Enoch:

Q. May I ask you a question? I neglected to ask you about the oats that you produce. Do you raise any oats on your farm?

A. Yes, we raise oats.

Q. How much?

A. I don't know how many bushels we raised, like that. We average it up. We don't ship it.

Q. Have you never shipped any oats?

A. No, sir.

[fol. 1018] Mr. Brown: Are you one of these old fashioned farmers that still use horses and mules?

The Witness: We still farm both ways.
Mr. Day: You mean with both horses and the oats?

By Mr. Enoch:

Q. What does your oats production amount to?
A. Well, I imagine each farm has a different program, you know, or allotment, but we will probably have a hundred acres of oats on each farm and it grows about an average of 40, 50, 60 bushels to the acre.
Q. And you have never within the past ten or twenty years, you have never shipped any oats?
A. No.
Q. You use it on the farm, you use your entire production on the farm?
A. That is right.

Exam. Taylor: Is that all, Mr. Enoch?
Mr. Enoch: Yes.
Exam. Taylor: Redirect?

Redirect examination.

By Mr. Root:

Q. Mr. Hatcher, the corn which you sold to the Farmers Square Deal Company on December 19, 1939 was what grade?
A. Number 1.
Q. I mean what did you sell it at? When Mr. Allen told you the price was 53½, what was that for?
A. That was for corn that would grade number 2.
[fol. 1019] Q. Or better?
A. Or better, yes, sir.
Q. Now, what was the bid of 50 cents per bushel given to you for down in Beaverville, Illinois, what grade of corn?
A. The same grade, 2 or better.
Q. And you sold the same class of grain regardless of how it eventually grades, is that right?
A. That is right.

Mr. Brown: Are you going to ask him about his November bid of 46 and a fraction?
Mr. Root: I don't know what the market was in November.
Mr. Brown: Well, I am going to ask him if you don't. I think I have a right to.

Mr. Enoch: If your Honor please, I would like to ask counsel if I am to understand now that the amount received was different from the bids?

Mr. Root: Off the record here.

Mr. Brown: All I want to know is this——

Mr. Root: All right, go ahead.

Mr. Brown: He said that his corn was of good quality and he sold it at a certain price, number 2 or better. You have taken him on his 53½ bid and you have taken him on his 50 cent bid. Now I want to find out if the bid that he got in November, which was much less than he got these other two times, was also for number 2 corn?

[fol. 1020] The Witness: That is right.

By Mr. Root:

Q. Mr. Hatcher, there was a question asked you in regard to whether or not you had shipped over the Illinois and Michigan canal and you, of course, stated that you had not because of your age. Now, do you have in your possession family records indicating considerable shipments made by your forebears over a long period of years?

A. I found some records the other day when I knew I was coming up here but they are not dated. They are just notations in a book, where they bought and sold so many bushels of grain but there is no date on it, so I didn't bring it along because I didn't think it would be authentic enough.

By Mr. Brown:

Q. Mr. Hatcher, do those records also show by what means of transportation the corn left Chicago?

A. No, no, not left Chicago; left the farm.

Q. Yes, but not left Chicago?

A. No.

Exam. Taylor: Is that all from this witness?

Mr. Brown: That is all.

Mr. Root: That is all.

Exam. Taylor: Witness excused. Next witness.

(Witness excused.)

Mr. Root: Sidney Nelson.

SIDNEY NELSON was sworn and testified as follows:

[fol. 1021] Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. Sidney Nelson.
Q. Where do you reside, Mr. Nelson?
A. Why, about four miles northwest of Morris.
Q. And what is your occupation or business?
A. Farmer.
Q. Are other members of your family engaged in the same line of endeavor?
A. Yes, my brother and I.
Q. Have you prepared a statement that you would like to make in this case? Let us expedite this all we can.
A. Yes.
Q. Give us your statement.
A. I am a farmer and a producer of corn in the territory of Grundy County, three and a half miles northwest of Morris, Illinois. The local elevators now pay me two and a half cents to three cents more per bushel for my corn since they are shipping it to the Chicago market by the Illinois waterway than they could if they were forced to buy my corn on the railroad basis. I am a taxpayer and have paid all my just share of taxes assessed against me by the state and local communities, which have gone for public improvement and waterway transportation and I am entitled to any benefits that are made by the expenditure of such taxes. For a number of years I have checked the [fol. 1022] local market with the Chicago market and I know that several years ago the local grain dealers were buying the farmers' grain at nine and ten cents under the Chicago cash market. Checking the same figures now I know that the local elevator operator is buying our grain at about five cents to seven cents under the Chicago cash market. My brother and myself will sell this year between 10 and 12 thousand bushels of corn. This saving of three cents per bushel will mean at least $360 to our profit.
Q. Mr. Nelson, ten years ago how did you sell the corn, f. o. b. the elevator or f. o. b. the farm?
A. Ten years ago?

Q. Yes.

A. Why, at that time, why, it would be on the farm; that is, delivered at the elevator.

Q. Well, straighten yourself out in the record, will you,—at the farm or the elevator ten years ago?

A. Ten years ago delivered at the elevator.

Q. Who delivered it?

A. We did.

Q. Now, today when you sell corn do you sell it f. o. b. the farm or f. o. b. the elevator?

A. F. o. b. the farm.

Q. Is there any expense in transporting that grain from the farm to tne elevator which you must bear?

[fol. 1023] A. No, sir.

Mr. Root: That is all.

Exam. Taylor: Any cross examination? Mr. Cole? Mr. Day?

Cross-examination.

By Mr. Dav:

Q. How much corn did you raise?

A. This year?

Q. Yes.

A. There will be about 10,000 bushels.

Q. And your brother raised 2,000?

A. No, sir. We farm together.

Q. Oh, you own the same farm together?

A. Well, we farm together. We don't own the same farm together. We have separate land but we farm together.

Q. You raised 10,000 yourself, though?

A. I said 10,000 between my brother and I.

Q. You did on your original statement but I am trying to find out——

A. No, I read "between".

Q. How much do you raise on your farm?

A. I read on my statement, I say it is between my brother and myself.

Q. Well, just tell us about your own farm now.

A. Well, we farm together as one.

Q. Well, you have got one farm, haven't you?

A. Yes, but we are farming together.

[fol. 1024] Q. How big a farm is yours?

A. What I have got in my own name?

Q. Yes.

A. Well, if you have got to know personally, why, it is 128 acres.

Q. There is no secret about it. You are a taxpayer and anybody could find out from the records how big a farm you have.

A. That is right, you can go and look at the records.

Q. How big is your brother's farm?

A. 125.

Q. They lie adjacent to each other?

A. Yes, sir. There is no fence between them either.

Q. Well, then ordinarily—well, there are a lot of farms that are not fenced, aren't there?

Mr. Brown: He means no spite fence. That is what you mean, isn't it?

The Witness: Well, no, there is no fence between them. We farm it all as one, and our father's farm is alongside, too.

By Mr. Day:

Q. Your father's farm is alongside, too?

A. Yes, sir.

Q. And you farm that, too, you and your brother?

A. Yes, sir.

Q. How many acres do you and your brother farm altogether?

A. 367 acres.

Q. And it is on these 367 acres, then, that you get this 10 [fol. 1025] to 12 thousand bushels of corn?

A. Yes, sir.

Q. Now, you said that ten years or so when you used to sell to the local market the price was nine or ten cents under the Chicago market. Isn't it a fact that at that time the price of corn was almost double what it is today?

A. Oh, well, I was saying between the cash——

Q. Is that a fact or not?

A. Ten years ago?

Q. Yes.

A. Well, I would have to look it up and see.

Q. Well, you know corn has been around a dollar or over in that period?

A. Since ten years, too, it has been a dollar.

Q. Yes. Well, I wanted to give you the benefit of the longest period you mentioned. How long have you been farming there?

A. I have been farming for myself since 1920.

Q. Have you any government loan on your corn?

A. No, I don't need it.

Q. You never have had any?

A. No, sir.

Q. And this corn that you and your brother raise is sold to the river elevator, as I understand it?

A. It is sold to the Farmers Square Deal.

Q. Isn't that on the river?

[fol. 1026] A. No, sir.

Q. Where is their elevator?

A. It is situated on Liberty Street in Morris.

Q. Well, it is hauled direct to the river elevator, isn't it?

A. Well, I don't know; I don't follow it up. I sell it to them and then let them take care of it.

Q. They take it off of your farm and you don't know what happens to it?

A. No, sir.

Q. But you have an idea that it might move on the river after it leaves your farm?

Mr. Root: He says he dosn't know.

The Witness: Yes.

By Mr. Day:

Q. Is Morris the nearest town to your farm?

A. Yes, sir.

Q. Is there another town near it?

A. Oh, there is Seneca southwest of us and Yorkville north of us.

Q. You said you lived northwest of Morris?

A. Yes.

Q. Seneca wouldn't be the next nearest town, would it?

A. Well, yes.

Q. Isn't Seneca southwest of Morris?

A. Yes. That would be the next nearest.

Q. That is the next nearest?

A. Yes, sir.

[fol. 1027] Q. How far are you from Seneca?

A. Oh, about 12 miles.

Mr. Day: That is all.

By Mr. Enoch:

Q. Have you sold any corn this year?
A. Oh, I have sold a little bit.
Q. How much?
A. My wife's corn, not mine.
Q. How much?
A. Oh, there is about 200 bushels.
Q. To whom did you sell it?
A. The Square Deal.
Q. How much did you get for it?
A. 41 cents.
Q. How much?
A. 41.
Q. When was that?
A. Oh, it was in November sometime.
Q. About when in November?
A. Oh, I wouldn't say. Probably about the middle or maybe before then.
Q. You can't give me the date?
A. No, I couldn't give you the date. It was my wife's corn.
Q. Are you sure it wasn't the latter part of November?
A. Well, I couldn't tell you for sure when it was.
Q. I am not talking about the bids now.
[fol. 1028] A. No, I am talking about the corn I sold.
Q. You got 41 cents for this corn?
A. Yes, sir.
Q. Do you raise any oats?
A. Yes, sir.
Q. Do you sell them?
A. Some of them.
Q. Have you sold any this year?
A. No, sir.
Q. When you sell your oats to whom do you sell?
A. Square Deal as a rule.
Q. Do you know whether the barges ever handled any oats coming from your farm?
A. I don't ask them that question.
Q. Do you have the same experience in respect of prices on oats that you do on corn?

A. Oh, there isn't that margin.

Q. Is there any margin?

A. Oh, they must have some.

Q. You mean that the river elevators are offering a higher price than you can get for oats on a line elevator?

A. I don't inquire at the river elevator. I inquire at the Square deal.

Q. Do you know whether or not there is a different price in your community for oats for water movement than there [fol. 1029] is for oats for rail movement?

A. I don't inquire which way he wants to ship it.

Q. Then you don't know, that is the answer?

A. I ask him to get his price on the oats.

Q. Well, don't you ask him the same thing when you are trying to sell corn, what the price is on his corn?

A. Yes, sure.

Q. Have you ever tried to find out whether or not in regard to oats there is the same difference in prices that you have just talked about on corn?

A. Well, the crop of oats we sell is very small, it don't amount to much. We feed most of it.

Q. Well, you are trying to get all you can for your oats, aren't you, even though your volume is small, just the same as you try to get for your corn? You want to get all you can for it, don't you?

A. Oh, yes, we want to get all we can but it is no major crop, just a small crop.

Q. The fact of the matter is that you haven't got this situation in regard to oats that you have just described here in regard to corn, isn't that true, down around Morris?

A. Well, I wouldn't say for the elevator, I can't speak for them.

Mr. Enoch: That is all.

Exam. Taylor: Mr. Brown?

[fol. 1030] By Mr. Brown:

Q. Mr. Nelson, are you the same Mr. Nelson that appeared with another group before the Central Freight Association Lines in Chicago on September 1 this year?

A. Yes.

Q. My recollection is you said that you used to have your grain trucked from your farm into Wisconsin?

A. No, I never had any. I have had buyers that come down there bidding for it.

Q. Oh, yes. What I got was the gist, that the barge paid you about two cents a bushel more, the barge buyer, than truckers from Wisconsin used to pay you, is that about right?

A. No, I said over the railroad.

Q. Over the railroad. Well, now, when you sell your corn now do you sell it exclusively to the Square Deal Grain Corporation?

A. Well, I do, yes.

Q. Do you mind saying what is the reason for that?

A. No, I don't want to expose my opinion of the other dealers or anybody else.

Q. I didn't mean that.

A. Well, that is my reason.

Q. You think that the Square Deal lives up to its name?

A. Well, I have no complaint.

Q. All right. Are you in any way connected financially with the Square Deal Grain Corporation?

[fol. 1031] A. Oh, I own a few shares.

Q. Is that a cooperative company, the Square Deal Grain Corporation, operating under the Capper-Volstead act?

A. I don't know if it is.

Q. Are you a director in that company?

A. Yes.

Q. Have you any financial connection whatever with the Allied Cooperative Grain Dealers Corporation? I think that is the right name.

Mr. Root: That is right.

By Mr. Brown:

Q. Cooperative Allied Grain Dealers Corporation?

A. Well, they own a little stock in it.

Q. You own stock in it?

A. No, not myself; the elevator.

Q. The Square Deal Corporation, in which you own stock, also owns stock in the Allied?

A. Yes.

Q. Well, as a stockholder in the Square Deal Grain Corporation can you say whether the Square Deal Grain Corporation is at all financially interested in any of the towing

companies on the Illinois River? Would you know it if they were?

A. I don't know.

Q. Are you personally financially interested in any of the towing companies on the Illinois River?

[fol. 1032] A. No, sir.

Q. Are you financially interested in any company that owns or leases barges for carrying grain on the Illinois River?

A. You mean me personally?

Q. Yes.

A. No, sir.

Q. Would you know, as a stockholder of the Square Deal Grain Corporation, whether they are interested in barges financially that are operated on the Illinois River?

A. Well, I think they have a little bit of stock in it.

Q. That is, the Square Deal has?

A. Yes.

Q. In some barge company?

A. Yes.

Q. Do you know the name of that barge company?

A. The Allied Barge.

Q. It is known as the Allied Barge Company?

A. Yes.

Mr. Root: Corporation.

The Witness: Corporation.

By Mr. Brown:

Q. Allied Barge Corporation?

A. Yes.

Q. I would understand that latterly, at least the last two years, that all your grain is sold at the farm. That is, you [fol. 1033] get a certain prices at your farm and the buyer comes and gets it at your farm, is that right?

A. Yes, f.o.b. farm.

Q. And they make it a certain price at your farm?

A. Yes, sir.

Q. And you have nothing to do with the transportation from your farm either to the river or to the railroad elevator or beyond there, is that right?

A. No, sir.

Mr. Brown: That is all I have.

Exam. Taylor: Is that all from this witness? Have you anything on redirect?

Mr. Root: I would just like to ask one question.

Redirect examination.

By Mr. Root:

Q. Mr. Nelson, do you recall back here a few years ago corn was selling at about 25 cents a bushel on the Chicago cash market?

Mr. Day: I don't think he recalls anything like that.

The Witness: I sold it for less than that one year.

By Mr. Root:

Q. I am talking about the Chicago cash market. Do you remember when it was about 25 cents a bushel at the Chicago cash market?

A. What year?

Q. Well, do you remember a period back here several years ago when that was the case?

[fol. 1034] A. Yes.

Q. How much were they paying for grain in Morris at that time, the cash price in Morris at that time?

A. Well, when it was 25 in Chicago you mean?

Q. Yes.

A. Well, I think they were paying about 17 cents, I think, 16 or 17 cents.

Q. 16 or 17 cents?

A. I couldn't remember definitely.

Q. Was that before grain was shipped out of Morris over the Illinois waterway?

A. Yes.

Mr. Root: That is all.

Recross-examination.

By Mr. Day:

Q. When was corn selling for 25 cents on the Chicago market recently?

A. In 1932, I think.

Q. Do you think that was in 1932?

A. Yes.

Q. Did you sell some corn for 16 or 17 cents in that year?
A. I sold some for 20.
Q. For 20?
A. Yes, sir.
Q. When the Chicago market price was 25?
A. No, I didn't remember at that time what it was but I [fol. 1035] know it got down as low as 14 cents at one time at Morris.

Mr. Day: That is all.
Exam. Taylor: Is that all from this witness?
Mr. Root: May I ask one question that I overlooked?

Q. On the corn that you sold for your wife, that you answered someone on cross-examination, was that white corn or yellow corn?
A. Yellow corn.
Q. And what grade?
A. Number 2 or better.

Mr. Root: That is all.

By Mr. Day:

Q. Was that off one of the 373 odd acres?
A. No, it was off my wife's farm.
Q. Oh, she owns a farm also?
A. Yes, sir.
Q. She operates it herself?
A. I look after it.
Q. Well, do you work the farm?
A. No, sir.

Mr. Day: All right. That is all.
Exam. Taylor: Is that all from this witness? Witness cused; next witness.

(Witness excused.)

Mr. Root: Mr. Hunt.

Chester Hunt was sworn and testified as follows:

[fol. 1036] Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. Chester Hunt.
Q. Where do you reside, Mr. Hunt?

A. Morris, Illinois.

Q. In town or in the country?

A. In the country.

Q. And what is your business or occupation?

A. Farmer.

Q. Have you a short statement prepared that you would like to make?

A. Yes, sir. I have lived on a farm in the vicinity of Morris all my life and at present I farm 295 acres and I market from six to seven thousand bushel- of corn a year, corn being our major crop. Before the river opened to grain traffic we noted that our local elevators paid from nine to ten cents below Chicago for cash grain, cash corn, and since the river grain markets have become available the local prices for corn is from five to six cents below Chicago, that is, for equal grades. I estimate that the present river markets are worth about $180 a year to me on the corn.

Mr. Root: That is all I have on direct.

Exam. Taylor: Any questions? Cross-examine.

Cross-examination.

By Mr. Day:

Q. Are you living on a farm?

[fol. 1037] A. Yes, sir.

Q. How far is it from town?

A. Three miles.

Q. You make your sale to a river elevator, do you?

A. No.

Q. To whom do you sell your grain?

A. To the Square Deal elevator.

Q. And they come to your farm?

A. Yes, sir.

Q. Get the grain and haul it away?

A. Yes, sir.

Q. And pay you a certain price f. o. b. your farm?

A. They do.

Mr. Day: That is all.

By Mr. Brown:

Q. Mr. Hunt, you said you were a farmer. Have you any official connection with the Square Deal Grain Company at Morris, Illinois?

A. Yes, sir.

Q. What is your title or what is your position with that company?

A. I am president.

Q. How long have you been president?

A. Well, I believe it is about 10 or 12 years.

Q. Is that company a stockholder in the Cooperative Allied Grain Dealers Corporation?

[fol. 1038] A. Yes, sir.

Q. Is the stock held in the name of the Square Deal Company or you personally?

A. It is held in the name of the company.

Q. Did you hear what Mr. Nelson said about the Square Deal Grain Company, your company, being interested in the ownership of barges that operate on the Illinois waterway?

A. I didn't quite hear him but I think that is probably what he said.

Q. Well, I ask you now, does your company, the Square Deal,—if I don't give the right name, why, give it to me,—does your company, the Farmers Square Deal Grain Company of Morris, Illinois, does it own any barges that operate on the Illinois River that carries grain?

A. We own some stock in the barge company.

Q. And what is the name of the company in which your company owns stock for the barge?

A. I think that is the Allied Barge Corporation. I am not quite positive about the name.

Q. Are you an officer in the Allied Barge Company?

A. No, sir.

Q. Who is the president of that company?

A. Well, I don't know that I can tell you just who the president is.

Q. Do you know the name of the secretary of that company?

[fol. 1039] Mr. Root: Your Honor, I submit that this is outside of the scope of cross examination. We will also bring it out. We have a witness that will testify fully on it.

Mr. Brown: You have got a witness here who says that his company is interested in the ownership of barges and he has given the name of the company in which the title to the barges rests. Now, he is on the witness stand and I am going to ask him these questions.

Mr. Root: I was merely suggesting that to save time.

Mr. Brown: All right, I want to save time, too.

Q. Will you please give me the name of the secretary of the Allied Barge Company that owns these barges?

A. I can't give you the name of the secretary.

Q. Do you know anyone other than yourself who is interested as an owner in the Allied Barge Company barges?

A. I think that the Allied Grain Company owns stock in it.

Q. All right. Which is your company?

A. The Farmers Square Deal Grain Company.

Q. Part owner of these barges. Does your company, the Farmers Square Deal Grain Company, part owner of these barges, get any returns or profits from the operation of these barges?

A. Well, I don't believe that they have yet.

Q. As president of your company would you know?

A. I should.

Q. How long has the Allied Barge Company owned these [fol. 1040] barges and operated them?

A. I don't think it is quite a year yet.

Q. And no returns in this year, no returns for this last year?

A. Not to us at least.

Q. What is the end of your fiscal year of that company?

Mr. Root: Which company?

Mr. Brown: The barge company.

A. I can't tell you.

Q. And as a stockholder you don't know?

A. No.

Q. And so far as your own company is concerned it has so far received no return from its money invested in the barge company?

A. Not directly.

Q. Well, if it has not received it directly how has it received it indirectly?

A. Well, I came here to testify as a farmer and as to my grain interest in this, but I suspect that they have considerable indebtedness and they have been reducing their indebtedness.

Q. Who?

A. The barge company.

Q. Oh, you mean they are wiping off their original investment by their profits?

A. I would suggest that.

Q. In other words, what was the original investment and so far what has been the net profits?

[fol. 1041] A. I can't tell you.

Q. Well, can you tell me the name of any responsible officer of this company in which your company has got stock, can you tell me that?

A. Just what was that question?

Q. As your company as an owner of some stock in this barge company can you give me the name of any officer of this barge company who might give me the information I want to know as to its original investment and its net return so far from its whole year's operation?

A. I don't believe that I can.

Mr. Brown: That is all.

Mr. Cole: I want to ask one question.

Q. Mr. Hunt, I just learned that you were president of this Square Deal elevator. Does that elevator as such purchase grain at Morris from the various farmers around there?

A. Yes, sir.

Q. When the Square Deal elevator purchases the grain from the farmers does it ship all of that grain via the barges that are owned by this Allied Barge Company?

A. I don't believe that it does.

Q. What other methods of transportation does the Square Deal elevator use out of Morris to get *get* the grain to Chicago?

A. Some goes by rail.

Q. Sometimes the Square Deal elevator ships their grain [fol. 1042] via rail?

A. Yes, sir.

Q. To Chicago?

A. I don't know where they ship it.

Q. But sometimes they use rail shipment?

A. Yes, sir.

Q. Well, the same elevator after it purchases the grain does it sell that grain,—if it is going to Chicago does the Square Deal elevator send the grain to Chicago and wait for remittances from that sale at Chicago?

A. I don't know exactly what the procedure is there. Some of the grain goes to Chicago and some goes on the river. It would depend on the bids and where the grain is to go.

Q. Do I understand you to say that in some instances your company that you are president of, the Square Deal elevator, in some instances you ship corn to Chicago either via the river or via the railroad?

A. Yes.

Q. Lately have you made any shipments from Morris of corn to Chicago via railroad, within the last, say, two months?

A. I don't know that there has been.

Q. Have you made any shipments via this Allied Barge Line of corn to Chicago in the last two months?

A. Now you are talking about the Square Deal?

Q. Yes.

[fol. 1043] A. Our shipments would not be to that barge line. We would make the sales to the Allied Grain Company and they would ship on the barge, if that is your question.

Q. I don't believe I understood you, Mr. Hunt, in your reply.

A. We do not ship directly on the barge. Our sales that go by the river are made to the Allied Grain. The Allied Grain will ship on the barge.

Q. The Allied Grain,—you sell your corn, then, to the Allied Grain Company and the Allied Grain Company ships that grain in an Allied Barge Company barge, is that it?

A. Yes, sir.

Q. What relationship is there between the Allied Grain Company and that Allied Barge Company? Are they both the same?

A. I think not.

Q. Well, when the Square Deal Elevator Company as such sends shipments out on the railroad have they sold the grain to somebody else before it gets out on the railroad, too?

A. Well, I suppose so.

Q. Well, are you familiar as president with just the way the Square Deal Elevator handles its business?

A. To some extent.

Q. Do you have charge of the elevator?

A. No, sir. I am a farmer.

Q. Well, is any of your time involved in the operations or the business conditions of the Square Deal elevator?

[fol. 1044] A. No, sir.

Q. Are you in a position that you can say whether they shipped rail and ba-ge within a reasonably close time of one another?

A. I could not.

Q. You couldn't say that?

A. No.

Q. Whether they did or not, could you? Could you?

A. I can only answer the question as I have, that some of the grain goes to the rail, some goes to the Allied and on the river.

Q. How long has it been since any of the grain that the Square Deal elevator has bought has moved out over the railroad, do you know?

A. No, sir.

Q. Well, then, why do you keep on answering me that some of it is shipped out on the railroad if you don't know when they have made a shipment on the railroad?

Mr. Root: Mr. Cole, pardon me. Mr. Examiner, I think it is evident from his answers that this gentleman is not the operator of that. He is the president. Mr. Allen is the manager of the Square Deal and he handles the transactions of that corporation. He is going to go on the stand and you will have an opportunity to examine him at any length that you see fit on how he handles that business of the grain company, or anything else.

Mr. Cole: All right. I didn't know that he was going on. [fol. 1045] In order that we might not have the record confused with Mr. Hunt, then, Mr. Hunt, will you just listen and answer this question just to try to straighten this out here?

Q. You are unable to say from your own knowledge, Mr. Hunt, because you do not operate the elevator and you don't have anything to do with their business, how they ship their stuff from time to time, do you?

A. I wouldn't want to make a positive statement.

Mr. Cole: All right, that cleans that up.

Exam. Taylor: Is that all from this witness?

Q. Mr. Hunt, you mentioned the fact that the Allied Barge Company does the moving of the grain up the Illinois River?

A. Yes, sir.

Q. I have heard throughout this case of tow boats. Are they separate organizations?

A. Of who?

Q. Tow boats that take the barges. Are they separate from, for example, the Allied Barge Corporation?

A. Yes, sir.

Q. They are a separate organization?

A. Yes, sir.

Q. Has your company any interest in them?

A. We own no tow boats, no.

Exam. Taylor: Is that all from this witness? Witness excused. Next witness.

(Witness excused.)

[fol. 1046] Mr. Root: Mr. McClelland.

R. A. McClelland was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

A. R. A. McClelland.

Q. Mr. McClelland, where do you reside?

A. Dwight, Illinois.

Q. You have prepared a statement which you would like to make here today?

A. I have.

Q. Will you give that statement?

A. My name is R. A. McClelland and I reside in Dwight, Illinois. For 32 years last past I have owned and operated a country grain elevator in Dwight, Illinois which is 20 miles south of Morris, Illinois, which is the nearest point on the Illinois waterway and is approximately 74 miles from Chicago, Illinois. During my experience I have seen a great many changes in the grain business. For many years farmers hauled their grain through mud and snow with horses and wagons. With the improvement of roads came the period of small farm trucks and now with the concrete highways the farmers generally employ large commercial trucks to transport their grain to the local eleva-

tors. During this period the country elevators have also [fol. 1047] been required to make changes, many of them expensive, in order to give proper service to their farm patrons. Transportation from the country elevators to the terminal elevators has likewise changed during this 32 year period. In the earliest days we had small cars from 40,000 pounds to 60,000 pounds capacity, then came to the exit of these cars and the use of 80,000 pound capacity cars. Now we have cars of 100,000 pound capacity and even larger. During this period of time we also had changes in rates in the transportation of grain by rail. In the earliest days the rate from Dwight to Chicago was 5 cents per 100 pounds. Then gradually the rate was raised to 9½ cents per 100 pounds in 1934 and finally to 10 cents per 100 pounds in 1938. With the appearance of the large trucks came the idea of the long hauling direct from the farm to the Chicago terminal elevators and the elimination of the country elevators which had served the farmers these many years and which should still serve the farmer at the present and in the future. In my territory in and about Dwight the Rosenbaum Grain Corporation was the originator of the procedure of trucking the grain direct from the farmers to the terminal elevator in Chicago. This practice started during the years 1933 and 1934 and the idea was spread like fire by other firms on the Board of Trade from one farm community to the other. As an independent country elevator operator I was then faced with the problem of whether I could stay in business against [fol. 1048] this truck competition. It cost me one cent per bushel to haul the corn from the farm to my elevator in Dwight and 5⅜ cents per bushel to ship the corn by rail from Dwight to Chicago, plus one cent per bushel commission paid in Chicago. Later, when the rail rate was raised to 10 cents per 100 pounds in 1938, it cost me 5-6/10 cents per bushel to ship corn from Dwight to Chicago. At the same time the large truck was hauling the grain direct from the farm to the Chicago terminal elevator for 5 cents per bushel. Even today, when I have the advantage of the Illinois waterway shipping rates, together with reshipping privileges on grain shipped over that waterway, E. R. Bacon & Company has on many occasions over-bid the price which I can afford to pay. E. R. Bacon & Company has a full time man in Morris who purchases grain throughout

the country and all the grain purchased by him is trucked direct from the farm to the Chicago terminal elevators. Recently I called a trucking company to haul for me and, believe it or not, the trucker's wife informer me, "He is hauling corn from near Rockford, Illinois to E. R. Bacon & Company in Chicago." The principal cash crop which is sold by the farmers in the vicinity of Dwight, Illinois is corn. With the above mentioned conditions existing I saw my business of long standing going to pieces and could see no relief in sight. Together with other grain men from my part of the state I came to Chicago and many times attended meetings in which we implored the Chicago [fol. 1049] Board of Trade to control the action of its members who are trucking directly from the farm to the terminal elevators in Chicago. Myself and other grain men in this part of the state also implored the railroads to assist us in making competitive rates which would enable both the railroads and the country elevators to remain in business. Each and every time we had such a meeting we received promises from both the Board of Trade and the railroads but nothing more of any value to us. Conditions were indeed becoming desperate for the country elevators. The farmer who had paid me a commissio.. during the many years I had been in business for obtaining the best price and giving him the best service that I could would laugh when I said to him, "Now, John, it is better that you sacrifice two or three cents per bushel and continue to sell your grain to me so that I can ship it to Chicago by rail and enable the Chicago commission men and the railroad to get their regular charges." This method of approach, of course, would not work so that myself and other elevator men were compelled to seek new methods by which we would be enabled to meet this truck competition. Fortunately, a number of years ago the State of Illinois conceived the idea of the deep waterway along the Illinois Valley and has spent millions of dollars in deepening and improving the Illinois River. During this time we were told by such men as Governors Lowden and Deneen this taxpayers' money was being spent for the purpose of providing cheaper transportation. In the summer of 1934— [fol. 1049a] this would be either in 1933 or 1934, I am not just sure which,—which was shortly after the construction of the Illinois waterway, two firms operated by men of

vision, namely, James Finnegan and Farmers National Grain Corporation, built elevators on the river front at Morris, Illinois. At last myself and other elevator men in this part of the state had available a method of meeting the truck competition and could maintain our local country elevator business. Upon the demise of the Farmers National Grain Corporation a number of independent elevator men and the Farmers Cooperative Elevator Association, in the vicinity of Morris, knowing the necessity of keeping available the river transportation of grain, organized the Cooperative Allied Grain Dealers Corporation and leased the elevator formerly occupied by the Farmers National Grain Corporation at Morris. The Cooperative Allied Grain Dealers Corporation took over the operation of this elevator in June of 1938 and has successfully operated it since that time.

Mr. Brown: What year, please?

The Witness: 1938. May I add that all elevator companies and owners in the vicinity, and who could be benefited by shipping by water from Morris, were invited to become members of the Cooperative Allied Grain Dealers Corporation and that offer still remains good. I am the secretary of the Cooperative Allied Grain Dealers Corporation and I am certain of this fact. It is my experience and knowledge, as an independent elevator operator and [fol. 1050] through my association with the Cooperative Allied Grain Dealers Corporation, that any elevator in the vicinity of Morris who is willing to become a member of the Cooperative Allied Grain Dealers Corporation can protect his own business and serve his patrons better. It is true that in the summer of 1939 the railroads adjacent to the Illinois waterway did estabish lake billing rates, which in themselves were considerably lower than the Illinois proportional rates, but it is interesting to note that the railroads did not do this to aid us in competing with the truck competition but did it only after we elevator men were forced to organize the Cooperative Allied Grain Dealers Corporation and ship via the Illinois waterway to protect ourselves. It is also interesting to note that these rates are graduated according to the distance to the respective shipping points from the Illinois waterway at Morris and it is apparently upon that basis that they were compiled. Since it has been possible for me to have my patrons' grain trucked to Morris and shipped from that

point to Chicago via the Illinois waterway, it is possible for me to pay my patrons from a half a cent to two cents more per bushel than I could pay my patrons were I to ship this grain to Chicago via rail under either of the rates now available to me, namely, lake billing rates or Illinois proportional rate. During the period that I have owned and operated an elevator it has been necesary for me and other elevator operators to make many adjustments to [fol. 1051] keep up with the times. One of these was the organization of the Cooperative Allied Grain Dealers Corporation which we did before it was too late. By doing this we have preserved our own business and made available to the farmers of the Illinois River valley the promise of the State of Illinois which has been "Cheaper rates by water transportation." It is my opinion that the Interstate Commerce Commission should not permit the proposed change in existing tariffs which, in my opinion, will benefit a few people at the expense of many farmers and business men and which will defeat the plan and promise of the State of Illinois and the Federal government to provide the farmers of the Illinois valley with the advantage of cheaper water transportation.

Exam. Taylor: Is that all on direct?

Mr. Root: Just one question I want to ask him.

Q. Mr. McClelland, did you and Mr. O. B. Robins at any time have a conversation with Mr. Behrle of the Alton Railroad with regard to obtaining a reduction in the freight rates so that you might meet the truck competition to which you referred in your statement?

Mr. Brown: You said, "at any time"? Do you mean at any specific time?

Mr. Root: Let him specify as nearly as he can the time.

The Witness: Many and many a time I have done so, starting back with the origination of the trucking business [fol. 1052] in Chicago.

Mr. Root: That is all.

The Witness: I have given him all the records that I had in my office and made them available to him so that he could act accordingly.

Exam. Taylor: We will recess for five minutes.

(Whereupon a short recess was had.)

Exam. Taylor: All right, now, gentlemen, come to order. Have you finished with the direct?

Mr. Root: Yes, sir.

Exam. Taylor: Cross-examine.

Cross-examination.

By Mr. Cole:

Q. Mr. McClelland, you testified that you had truck competition with your rail shipments before this water transportation came into play?

A. We did.

Q. Now, Mr. McClelland, now that the water transportation is in the picture I understood you to say that Bacon still secures his goods from your territory via truck?

A. If he possibly can, yes.

Q. Do you know what bids are being made in the country by Bacon's representatives in competition with you?

A. No, I don't because he certainly wouldn't give me his bid.

Q. And you haven't become familiar with——

A. I have heard of them at different times. I have been [fol. 1053] shown cards at different times.

Q. When you have been shown those cards that Bacon was bidding in your territory what bids were you able to make with reference to that same bid?

A. Well, there were some times that with my low margin that I would not be able to meet the bid. Other times I would be perhaps half a cent above Bacon's bid.

Q. Then at the same time, for the same class merchandise since your water transportation is available you have been approximately on the same level with Bacon's bids for the truck shipments?

A. Very much so.

Q. And at times you have been able to outbid him?

A. At times I have been maybe half a cent over Bacon's bid, depending on how much he wanted to pay.

Q. Generally, those, bids, though, that Bacon's representatives have been able to make and yours have run, you would say, very close together?

A. Fairly so.

Q. And they have been that way since the water transportation has been in?

A. Yes.

Mr. Cole: Thank you. That is all I have.

Mr. Day: I have a few questions.

Q. I take it from what you said about your conferences [fol. 1054] with Mr. Behrle that your elevator is on the Alton Railroad?

A. Yes, sir.

Q. This grain that you buy and handle through the river facilities at Morris doesn't go through your elevator at all?

A. Not as a rule, no, sir.

Q. Do you handle any grain at all through your elevator now?

A. Yes, whenever I see fit.

Q. Where you have grain handled through your elevator would the movement by rail be in another direction than toward Chicago?

A. Not necessarily so, no.

Q. Do you sometimes have rail shipments to Chicago?

A. Quite frequently—I won't say quite frequently but I probably ship to Chicago more than any other market.

Q. When did you last ship any corn to Chicago?

A. Corn?

Q. Yes.

A. Oh, I can't tell you.

Q. It has been quite a while ago?

A. I wouldn't want to tell you positively when I had any.

Q. Do you know whether there were any shipments this year?

A. That is what I am not positive of. I think so, though.

Q. You don't know about that?

A. I think that I have.

Q. But you are not sure?

A. No, I wouldn't want to go on record that I had or had not.

[fol. 1055] Q. Is your elevator being used at all for storage of government grain?

A. Not my elevator, no, sir.

Q. Not your elevator?

A. No.

Q. What is the capacity of your elevator?

A. About 30,000, depending what it is filled with.

Q. What have you got in there now?

A. I have got some beans, a little corn, some oats.

Q. How much altogether?

A. Oh, I wouldn't say at the present time but not over two or three thousand bushels.

Q. What is the most of that, beans?

A. The biggest bushelage would be oats.

Q. That will move out via rail sometime, I suppose?

A. Probably so, yes.

Q. Now, there are other elevators in Dwight, are there not?

A. Yes, sir.

Q. Others on the Alton?

A. Yes, sir.

Q. How many?

A. Two.

Q. Do they handle grain as you do for shipment on the river?

A. In the same way, yes, sir.

Q. In the same way. That is, they make the same use [fol. 1056] of their elevator facilities about as you do?

A. Well, there is a little difference. There is one elevator that they use for dead storage. They fill it with oats and let it lay there until they get it ready to ship out and then from then on it is probably empty.

Q. Then is there an elevator on the New York Central at Dwight?

A. There is.

Q. Is that working in the same way?

A. Well, I presume it is. I am not familiar with the way they handle their elevators.

Q. You don't know?

A. It isn't my business. They probably wouldn't tell me.

Q. So far as these elevators with which you are familiar are concerned it is pretty much a storage proposition nowadays with them?

A. No, I don't use mine as dead storage. I use it more as a cumulative or whatever way that it serves my patrons the best and to my best interest.

Q. How long have you had these oats in there now?

A. Oh, I have had part of them in there since along in September, I presume, one kind of oats.

Q. Now, you stated that--well, let me ask you this first: What is your truck cost to the river at Morris?

A. It costs me a cent and a half a bushel out of my territory.

Q. And what do you get out of it,—two cents a bushel as [fol. 1057] these other operators do?

A. What, to Morris?

Q. Yes.

A. Well, I get one cent and I hope to get two.

Q. You mean that you hope that there will be some readjustment later on that will give you another cent?

A. There will be sufficient profits made that will make me two cents a bushel.

Q. Is that on account of your connection with the Co-operative Allied?

A. It is, yes, sir.

Q. But as an elevator operator without your Allied affiliation you get how much?

A. I get one cent.

Q. One cent. You stated that the rail rate was 10 cents, I think, from Dwight to Chicago?

A. Yes, sir, and I. P. billing.

Q. Subsequently you modified your statement to the effect that you said that in June of this year, or thereabouts, the railroads had put in some reduced local rates?

A. Lake rates.

Q. Yes. Now, it is a fact that the present rate, the present local rate via rail from Dwight to Chicago is 6 cents, isn't it?

A. Yes.

Q. You also stated that these local rates were made with [fol. 1057a] relation to the location of the origin from the river and that as you got farther away from the river the rates increased?

A. Yes, sir.

Q. Now, do you know what the——

A. We have a 5 cent rate at Morris.

Q. Do you know what the rail rate is from Morris to Chicago?

A. 65 cents from—I mean it is 5 cents from Morris, 5½ from Mazon and 6 cents from Dwight.

Mr. Brown: Are you talking about the lake locals, Mr. McClelland?

The Witness: Yes, sir.

By Mr. Day:

Q. Where is Bacon's elevator in Chicago?

A. That I can't tell you. Down in South Chicago, I believe, but I am not sure.

Q. Is it located on the water?

A. It is on the Calumet Basin, I think.

Q. Well, is it on the water? Is it available to the water?

A. I don't think so. That is, I will say this, that it might be available to the water but I don't think he has facilities for unloading barge grain.

Q. Well, that is what I meant. If he hasn't got facilities, of course, it doesn't make any difference whether he is within a foot or a mile of the river. The Cooperative Grain organization with which you are connected is the same association with which Mr. Hunt was connected?

[fol. 1058] A. Yes, sir, the same one. There is about 22 or 23 of us.

Q. He is the president and you are the secretary?

A. No, sir, Mr. Hunt is not president. He is president of the Square Deal elevator in Morris.

Q. But in any event you are secretary of the Cooperative Allied?

A. Yes, sir.

Mr. Day: That is all.

By Mr. Enoch:

Q. Do you ever sell any oats to the Allied Cooperative?

A. A few.

Q. Where do you sell the most of your oats?

A. Wherever I can get the best treatment and most money.

Q. Do you sell most of them in Chicago?

A. Sometimes in Chicago, sometimes Lockport, sometimes in St. Louis.

Q. What is your steadiest market where you sell most of your oats?

A. It depends altogether upon the quality oats that I have. This year I don't have a good quality oat. Consequently, I put most of them to Chicago. They are not fit for the mill at Lockport.

Q. And how do you transport them to Chicago?

A. By rail.

Q. Can you get a better price for those oats by selling them to Chicago and transporting them there by rail than [fol. 1058a] you can get from any other purchaser?

A. Well, I won't say that because I go according to impulse and custom and I have friends on the Chicago Board of Trade that I occasionally want to give something.

Q. You wouldn't be so impulsive as to sell to the Allied, for instance, if you couldn't get as much money for it as you could at Chicago?

A. No, I would not.

Q. Now, have you received any corn recently,—have you received any bids for corn recently from the Allied Co-operative?

A. Well, I suppose my office has recently, has received them this afternoon. I haven't.

Q. Well, just speaking of your own knowledge now, when was the last bid?

A. Well, Monday afternoon was the last bid I had because that is the last time I was home.

Q. Well, take the first part of last week, did you get any bid from the Allied for corn?

A. I get them daily.

Q. What were they on Monday of last week?

A. I couldn't tell you.

Q. Can you tell me any particular day?

A. No, I couldn't tell you any particular day without looking at the records.

Q. Have you been buying from the farmers,—speaking [fol. 1059] of corn now,—during the last week?

A. I bought some corn——

Q. Pardon me, I mean the week before this.

A. Week before this?

Q. Yes.

A. I think I did, yes.

Q. Well, from whom?

A. Well, you have kind of got my memory now. I bought some on Monday of this week from Peter McGregor.

Q. How many bushels?

A. About 1500.

Q. Do you recall anyone else from whom you have recently bought any corn?

A. Oh, I bought corn from—I can't tell you just exactly what date or whether it was last week; that is immaterial to me as long as I get it. I bought corn from Joe Carstensen. I can name you a lot of them if you want to know them, that I bought from recently.

Q. Well, tell me some that you bought from recently and what you paid?

A. Well, I can't tell you.

Q. You are not in position to state now the information which would show the spread between the bid price for which you sold the grain to the Allied Cooperative and the price which you gave the farmer for his grain? You can't [fol. 1060] give me that information?

A. State that again, please.

Mr. Enoch: Please read the question.

(Question read.)

A. Well, I can give the information. It was one cent a bushel.

Q. No, no. What I mean is you are not in a position here now, as I understand it, to give us the information which would allow us or this Commission here from this record to determine the spread between the bid price that you got and the price paid to the farmer?

A. I couldn't exactly, no, sir, not from memory. May I tell you this, that I perhaps buy a little differently than others do. There are different customs in different towns. I see fit to make my price based delivered at Morris on the corn because I know that I can pay them more money by doing it. In that way my bid is one cent under the bid that the elevator at Morris gives me; that is, the Cooperative Allied Grain Dealers.

Q. Well, now, do I understand by that that you do not make the farmer an f. o. b. farm price?

A. No.

Q. That you make him a price delivered at Morris?

A. I don't make him that price. I make the price at Morris. I may indicate to him what it will net him at the farm.

Q. As between you as an elevator operator and the farmer from whom you are purchasing corn your dealings [fol. 1061] are direct with one another, are they not?

A. Yes, sir.

Q. And then you sell,—after you buy this grain from the farmer you sell it to the Allied Cooperative at Morris?

A. Well, occasionally I send it to Seneca.

Q. And to whom do you sell it there?

A. Cooperative Allied Grain Dealers.

Q. The same outfit?

A. The same outfit.

Q. Now, approximately how long after you make this sale do you get your cash and your returns?

A. Well, on an average it is the second day after the corn goes over. I can get it the day that it went over if I follow the corn to get it.

Q. Do you get any account sales or any other similar documents from a corn house or anybody in Chicago?

A. None in regard to that particular corn.

Q. Well, in regard to any of the corn?

A. Oh, if I ship corn to Chicago I do.

Q. You mean by rail?

A. Yes.

Q. Do you get an account sales from the Allied Cooperative?

A. Well, you can call it a straight account sale or not. It is virtually the same thing. It is a statement of the loads, with the weights, with the price extended, which I [fol. 1062] presume would be the same as what you would call in Chicago an account sale.

Q. Does that document, whether it is proper to call it an account sales or not, show any charges which are purporting to be trimming charges?

A. It doesn't to me, no, sir. If I sell them corn at 53 cents a bushel, 2 yellow corn, they will pay me the 2 yellow corn price on my contract with no deductions except if the corn is not up to the contract grade.

Q. Now, wholly apart from the amount of money you get, does this document which we have been calling an account sales have any items on it that are described as trimming or commission or towing?

A. No.

Q. Or any similar items?

A. Now, let me get this straight. What I get from Morris in return for the corn that I send over there from Dwight?

Q. Yes.

A. No, sir, I do not.

Q. Now, do you get any documents from anybody in connection with your sales of corn where there is a movement out of Morris or Seneca or any other of those water elevators?

A. That I can't answer you because I am not in the office over there. Later on Mr. Robins will give you all that kind of information.

Q. Now, in this latter capacity you have been speaking [fol. 1062a] as secretary of the——

A. I am speaking more as an individual grain dealer. Any information you want concerning the elevator you will be perfectly welcome to get from Mr. Robins and Mr. Allen, president.

Mr. Brown: Of the Allied?

The Witness: Of the Allied Grain, yes.

Exam. Taylor: Mr. Brown?

By Mr. Brown:

Q. Mr. McClelland, I think you have just stated now that all the testimony you gave now is as an individual elevator operator at Dwight, Illinois?

A. Yes, what I referred to as Dwight.

Q. Your transactions between you and your former patrons in delivering corn at Morris or Seneca?

A. Yes.

Q. That is all you have been testifying to?

A. Yes.

Q. Now, is your elevator at Dwight,—are you the sole owner there?

A. Yes, sir, I am, of that elevator.

Q. Yes. Now, what is your nearest——

A. Let me qualify that. Put it in my wife and myself to tell the whole truth.

Q. That is close enough for me.

A. If you want to be technical I will give it to you.

Q. No, I don't want to go into any of your family affairs. [fol. 1063] Now, what is your nearest competitor who is bidding grain against you, where is his location?

A. Well, he is about two blocks down the street.

Q. Well, a little farther away; the next town we will say?

A. Well, there is Odell, that is about nine miles to the

southwest; Gardner, nine miles to the northeast; the little station of Blair, which is about five miles east and the station of Sunbury, that is about five miles west approximately.

Q. Well, would it be proper to say that the extent of your natural territory would be about two and a half miles west and then north and south about four and a half?

A. Not necessarily so, no, sir.

Q. Why not?

A. In Dwight we have some very large holders of land that own land at points that are farther than two and a half miles west and in other directions also and they happen to be friends of mine and I buy considerable grain from them.

Q. Were they patrons of your elevator before you commenced to ship by barge?

A. They have been for 32 years.

Q. Have you enlarged your buying territory to some extent since you commenced to ship by barge?

A. Yes, I think I will say that it has to a certain extent.

Q. Well, now——

A. Do you want to know why?

[fol. 1064] Q. If you want to tell me something go ahead.

A. Because the other elevators that are in that territory did not see fit to benefit themselves by the river transportation.

Q. You mean by becoming stockholders in the Allied?

A. Yes.

Q. Well, we will come to that later. Now, what would you say has been your normal, what they call margin or net profit, in operating your elevator year in and year out before you commenced selling to the barge?

A. I tried to get two cents.

Q. At the present time when you are shipping most of your corn, or having delivered most of your corn that you buy at either Seneca or Morris, do you sometimes have the farmer deliver it there and give him a set price at the elevator?

A. If I deliver to Morris or Seneca?

Q. And allow him to truck it?

A. Well, he can get any truck he wants to. I make him the price at Seneca or Morris and he can get any transportation agency he wants.

Q. You never do that for him?

A. Sometimes as an accommodation for the farmer I do, when they ask me to arrange for the transportation of the grain.

Q. What would you say would be the average haul on the highway from the farmers' farms that you are now generally buying from over to Seneca and Morris?

[fol. 1064a] A. Well, to Morris it would probably be about 20 miles. I have got some 25, 26 miles. I haul some as far as 35 miles.

Q. And does the allowance for trucking, of course, vary with the length of the haul?

A. Yes, the truckers charge pretty much according to the distance. In this territory, within a six mile radius of Dwight, it is a cent and a half a bushel.

Q. That comes out of the farmer's price?

A. That comes out of the price that the farmer gets. I deduct it. At the time I make settlement with the farmer I deduct the hauling charge for the trucker.

Q. In other words, as I understand it you take the bid from the Allied and then you transmit to the farmer whatever you think you ought to pay him for the grain, is that right?

A. I give him the price that I contract to pay him.

Q. And the difference between the two is for your services?

A. The difference between the Allied bid, you mean and what I pay the farmer?

Q. Yes, less the trucking?

A. Yes.

Q. That is your profit for your services?

A. Yes, one cent.

Q. One cent a bushel?

A. Yes.

[fol. 1065] Q. Does it ever get over that?

A. Does it ever get over that?

Q. Yes.

A. Oh, once in a while, if I don't happen to sell the grain today and the market goes up tomorrow. Sometimes it is the other way.

Q. Now, are there any other stockholders in the Allied who are competitors of yours within eight or nine miles of your elevator?

A. Oh, I have got a lot of them.

Q. Within eight or nine miles who are also stockholders?

A. I wouldn't say a lot of them but I have got several.

Q. Who are also stockholders in the Allied?

A. Who are also stockholders in the Allied, yes, sir.

Q. Now, do you invade their territory when you take as low as a cent a bushel for your services?

A. No, I don't think I do, not of members of the Allied, no, because I have no advantage over them and they have none over me.

Q. You think they do as you do?

A. I think they do the same as I do.

Q. Since you are not the sole owner of your elevator at Dwight, are you also the sole owner of the stock that you hold in the Allied,—I want to get the right name,—Co-operative Allied Grain Dealers Corporation?

A. Yes, sir.

[fol. 1066] Q. And you are secretary of that organization?

A. Yes.

Q. All right. Now, has that Grain Dealers Corporation any relationship to what has been called here the Allied Barge Corporation or Allied Barge Company?

A. They are to the extent of the stock that they hold in it.

Q. That is, the Grain Dealers Corporation owns stock in the Allied Barge Company?

A. Yes.

Q. Do you individually own any stock in the Allied Barge Company?

A. I do not.

Q. It is only through your stock ownership in the Grain Dealers Corporation that you are connected with the Allied?

A. Yes.

Q. All right. Now, as secretary of the Grain Corporation can you tell me what investment there has been so far in barges that are owned or controlled by the Allied Barge Company?

A. No, sir, I can't tell you that because I am not familiar with the Allied Barge Line.

Q. I see. The Allied Barge Company has a separate set of officers?

A. They have a separate set of officers, yes, sir.

Q. Do you know who they are? Do you care to tell me who they are if you know who they are?

[fol. 1067] A. Well, I think Mr. Robins is president and I think,—I am not sure but I think Mr. Allen is secretary, although I cannot be sure about that.

Q. All right, we will let that go. Now, as secretary of the Grain Dealers Corporation can you tell me what rental the Grain Dealers Corporation pays to the Barge Company for the use of their barges in hauling the grain to Chicago?

A. No, I cannot because that is a matter that is established by the manager of the company.

Q. Isn't there a time of making an accounting to the Grain Dealers Corporation, what it has to pay the barge company?

A. We haven't had a fiscal year since the thing was started.

Q. I see. Do you expect to have that soon?

A. I hope so.

Q. Do you think you will have it before this hearing is closed?

A. No, I don't.

Q. You will delay it until after?

A. Although if it goes on the way it is around here I am quite sure we will have.

Q. All right. Are you also a director in the Allied?

A. The Allied Grain Dealers?

Q. Yes.

A. Yes, sir.

Q. And the secretary?

A. Yes, sir.

[fol. 1068] Mr. Brown: That is all.

Exam. Taylor: Is there anything on redirect?

Mr. Root: I would like to ask just a very few questions.

Redirect examination.

By Mr. Root:

Q. Mr. McClelland, do you personally know most of your patrons who deal with you in your elevator in Dwight?

A. I think I know all of them.

Q. How many years do you say that you have done business with the average of your patrons?

A. Oh, I couldn't tell you the number of years on the

average of my patrons. I can tell you the number of years of the oldest of my patrons, which would be 32 years. They come and go, die and grow up.

Q. As a matter of fact, do you usually do business with the same group of patrons one year after another?

A. Very largely so.

Q. Making allowance for some coming of age and certain ones dying or moving away?

A. Yes, largely so.

Q. As a result of your business experience do you have any opinion as to whether it is better business practice for you to take a reasonable profit of, say, two cents a bushel and pass on to your patrons the rest of the price that you can get for the grain, or not?

Mr. Enoch: Oh, just a moment. There is no basis for [fol. 1069] any such an assumption as that. I don't know that there is any testimony here about anything being passed on.

Mr. Root: Well, I believe there is a reason. I want to find out what the practice of this man's business is here.

They have inquired about what he took out of it and how much he did not and so on and so forth, so I want to show that this man over a period of years has taken out about the same amount.

Mr. Enoch: I want to object to any further testimony along this line that allows the witness to tell conclusions without stating the facts upon which the conclusions are based. Now, Mr. Root knows that the proper way to put in that kind of testimony would be to show what the grain sold for when it passed into the hands of the Allied Co-operative and what the farmer got for it and how much Mr. Allen took out of it and how much the trucker took out of that and then the Commission could come to some conclusion as to how much the farmer got out of it.

Mr. Root: I will withdraw that statement. Off the record.

(Discussion outside the record.)

Exam. Taylor: Is that all?

By Mr. Root:

Q. During your period of elevator operatorship what is the commission which you have been trying to get on each bushel of grain you handled?

A. It has been my practice to attempt to get two cents per bushel.

Q. Is that the practice you have followed over the 32 years?

[fol. 1070] A. Yes; of course, depending upon competition. Sometimes I have had competition and I did well to get what I paid for it.

Q. Has your practice changed any in the last three or four years?

A. Well, at the present time if I took over two cents per bushel Mr. Bacon would be down there and get the corn.

Q. I mean taking into consideration what you expected to get back from your cooperative are you still attempting to get two cents a bushel?

A. Yes, I am.

Q. Over a period of 32 years have your patrons apparently been satisfied with your service?

A. I don't think they would continue to do business with me if they hadn't been.

Mr. Root: That is all.

Exam. Taylor: Anything further on direct? Cross? Witness excused. Next witness.

(Witness excused.)

Mr. Root: Well now, if somebody else wants to get in here now with some other witness that will not be available later I wish they would do so.

Mr. Enoch: I would like to see the Allied finish. I understand Mr. Allen is here.

Mr. Root: Let me say this for the benefit of everyone: Mr. Allen and Mr. Robins are both here. The way this is going on neither one of them could possibly finish today. [fol. 1071] They will be present at any continuation of this hearing whether it is here or in Washington.

Mr. Brown: Why do you say "Washington"?

Mr. Root: I am merely telling you what the Examiner mentioned a while ago, that it might be in Washington. This is my first experience in one of these cases. I don't know what will happen.

Mr. Brown: Wouldn't this be a good time to settle what we are going to do?

Exam. Taylor: Let us go until five o'clock.

Mr. Root: I am going to say that Mr. Robins and Mr. Allen will testify.

G. W. Baxter was sworn and testified as follows:

Direct examination:

Exam. Taylor: Give your name to the reporter.

The Witness: My name is G. W. Baxter. I am director of the transportation department of the Illinois Agricultural Association. The Illinois Agricultural Association is a membership association of approximately 72,000 farmers in the State of Illinois located in each of the counties of the state. Back in 1935, in the Memphis Grain Case, ICC docket 26965, in that case I represented the Illinois Agricultural Association and the American Farm Bureau Federation as a result of the meeting of the board of directors of each of those organizations, in which they laid [fol. 1072] down a policy that no farmer should be denied the natural advantages of any inland waterway transportation, and in discussing this case with our president and general counsel we are taking the same position in this case of the objectors, that the farmers located near the Illinois waterway should not be denied any natural advantage which they may have and no farmer, or I will say individual producer not living adjoining the waterway will in no way be affected in the price that he gets for his corn.

Mr. Enoch: That is a pretty large order you have dealt yourself there, that you have delivered yourself of there, I think.

The Witness: Well, if you can prove that he has been hurt, I will leave it up to you. That is all I have.

Exam. Taylor: Anything by counsel for protestants?

By Mr. Root:

Q. If I understood your last statement you mean that no one away from the Illinois valley, in your opinion, has been harmed?

A. No. His price is not affected in his bids that he gets because he cannot take advantage of the river. Now, he don't get as good a price, I will admit that, but the river has no effect.

Q. He gets the same prices he always did before?

A. Always did before and always will, possibly. We hoped he would get a better one.

Mr. Root: We all did that.

[fol. 1073] Exam. Taylor: Is that all?

Mr. Root: I have no more.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Enoch:

Q. What farmer are you talking about,—the farmer out in Iowa?

A. I spoke f the membership in the State of Illinois and I so mentioned.

Q. This fellow that is always going to get the same price as he got before, who is that?

A. You speak of the farmer in Iowa, he hasn't the natural advantage of the Chicago market that some Illinois rail shipper has. He has to pay a higher rate.

Q. He used to have the benefit of the Chicago market?

A. Well, he sells on the Chicago market but I say that a farmer in Iowa may pay 20 cents a hundred freight rate to get into Chicago where an Illinois shipper may pay 12 cents. He has a geographical advantage.

Q. You made the statement here that the farmers not tributary to the waterway were not hurt by this natural highway that you referred to?

A. Natural waterway, yes.

Q. And I am wondering what farmer you are talking about? Now you are talking about the farmer in Iowa. You say he is not hurt by this?

[fol. 1074] A. I am not speaking for the farmer in Iowa. I am speaking for the membership in the State of Illinois whom I represent.

Q. Where is this farmer located who is not going to be hurt? That is the man I am talking about.

A. I am speaking of the fellow away from the river.

Q. Is that the man in Iowa?

A. In Illinois. I am not speaking for Iowa. I have no authority to speak for Iowa.

Q. Tell me as an expert, will he be hurt? What is your opinion about whether or not the man in Iowa will be hurt?

A. I don't see that he will be hurt.

Q. How about the man in Nebraska?

A. I don't see that it will affect him one way.

Q. Do you think they were hurt when by reason of cheap water transportation from Peoria to Havana a great deal of this corn went into the southeast? Do you think they were hurt at that time?

A. Well, I don't see that they were.

Q. Do you think that they were hurt if by reason of this extra volume of grain moving down the Illinois and Mississippi rivers to Memphis, thence into the southeast, they were denied a market which they had had for the previous ten, twenty or thirty years? Don't you think that that had some effect upon their ability to get their grain into consuming territory?

A. Are you speaking of that abnormal movement in 1937-1938?

[fol. 1075] Q. Yes.

A. Well, I think that the farmers from that section of the country shipped grain down there as well as the waterway.

Q. Let me ask you this: If, say, the farmer in Nebraska had corn to sell in the old days and had a market in the southeast and he had been in the habit over a long period of years of finding consumers for his corn down in the southeast and then by reason of the situation such as arose on the Illinois and Mississippi rivers there was an unusually large volume of grain moving from points like Morris and Havana and Peoria, from a territory as narrow as 25 miles from the Illinois receivers, and by reason of that he was denied that market which he had previously had, has he been hurt, in your opinion?

Mr. Belnap: Mr. Examiner, I am going to object on the ground that the witness in his direct did not go into conditions outside of the State of Illinois. He is bringing in about some farmer in Iowa or Nebraska.

Mr. Enoch: Well, I have asked him what his position was about that.

Mr. Belnap: All right.

Mr. Enoch: And he told me he didn't think he would be hurt.

Mr. Belnap: He is dealing with the situation in the State of Illinois in his direct. I object on the ground that the cross examination goes beyond that.

Mr. Enoch: I understand this witness is now subject to [fol. 1076] cross examination. He has expressed the opin-

ion that the man in Illinois who is not tributary to the river is not hurt. Now, in order to test the merit of that opinion I certainly have a right to ask him whether or not the man in Iowa or the man in Nebraska will be hurt.

Mr. Belnap: By what?

Mr. Enoch: Similar circumstances.

Mr. Belnap: If I understand the question it has no relation to similar circumstances, Mr. Examiner.

Mr. Enoch: Well, your understandings, I hope and I think, are very much in error there.

Mr. Belnap: I heard Mr. Enoch state certain bases, certain facts about the displacement of tonnage and the state of the record shows that there is no evidence given on direct by the witness on which to predicate any statement like that and I object further on that further ground, I make that objection also.

Mr. Enoch: I asked him to assume that, which, I say, is analogous to this situation in Chicago on this extra volume of grain by water to Chicago, which has not occurred before in the last two years.

Mr. Belnap: Mr. Examiner, I don't understand that the record shows that the movement by water has made an extra volume of movement. All the evidence I have heard is that when it would move by water or by rail it would be the same volume.

Mr. Enoch: I said "extra volume by water."

[fol. 1077] Exam. Taylor: The witness may answer if he knows.

The Witness: Well, I don't know that it would move any different in the territory you speak of but if it did happen there was an extra volume going down the river, taking the cash grain out of central Illinois, I think it would help the Chicago market and thereby help probably the Nebraska farmer.

Mr. Brown: You mean in the matter of price?

The Witness: Yes. They would have more of a demand for corn in Chicago and pull it out of central Illinois.

By Mr. Enoch:

Q. Well, do you think this farmer I am talking about is located on the Chicago market? I am talking about this fellow out in Iowa and Nebraska. I want to know if this market is taken away from him, the one that he has had for ten years, by reason of——

A. I don't know that it is.

Q. I am asking you to assume that it is. If it is taken away from him is he hurt?

A. I don't see that he is.

Q. All right. And that is the reason you say that this Illinois farmer who is not tributary to the waterways is not hurt?

A. No, he gets the same price for his corn as he always has, based on the Chicago market.

Q. There is the reason, or, I say, is the reason or one of the reasons why you arrived at the conclusion that the man not tributary to the water in Illinois is not hurt the reason [fol. 1078] that you say that the man in Iowa and Nebraska is not hurt in the circumstances I asked you to assume?

A. One reason I say that is that——

Q. You are not going to answer the question, I can see that.

A. You heard the testimony yesterday by these elevator men that if this rate was cancelled that they could not pay the farmer any more money, and that is what we are interested in, is the producer himself. We are interested in seeing that he gets more money for his grain.

Q. Didn't you attend a hearing in Atlanta?

A. Yes, sir.

Q. What hearing was that?

A. I couldn't tell you the name of it.

Q. Did it have anything to do with the rates from this territory into the southeast?

A. Yes, that affected the rates—as I recall, the Oklahoma and Texas interests were seeking a reduction into the southeast and an increase from Illinois, as I recall it.

Q. You opposed that reduction?

A. Yes.

Q. On the ground that it would be injurious to the Illinois corn grower. Why?

A. Because we had a territory in southern Illinois that had a natural market in the southeast.

Q. And you were afraid that if Oklahoma got this reduc- [fol. 1079] tion into the southeast they would ship more grain from Oklahoma than they had previously shipped and to the extent that they did ship more grain there would be less grain moved from Illinois and other producing territories?

A. Well, they were proposing to increase the Illinois rates, which would have that effect, and lower the Oklahoma and Texas rates.

Q. Now, are you right about that, that there was a proposal to increase the Illinois rates into the southeast?

A. As I recall there was a proposed—you say not?

Q. No.

A. Well, I will take your word for it.

Mr. Cole: No increase in Illinois.

The Witness: It was a reduction in Oklahoma and Texas.

Mr. Cole: That is right.

Exam. Taylor: Is that all, Mr. Enoch?

Mr. Enoch: Yes.

By Mr. Day:

Q. Where are your headquarters, Mr. Baxter?

A. 608 South Dearborn Street.

Q. In Chicago?

A. In Chicago.

Q. Who maintains your organization? Who pays the expenses?

A. This is a membership organization of 72,000 farmers.

Q. You have 72,000 farmers paying dues?

A. Yes.

[fol. 1080] Q. How much are your dues?

A. The dues are fifteen dollars per year and ten dollars of that fifteen goes to the county farm bureau, which is the county organization, and the other five goes to the Illinois Agricultural Association and out of that five we pay fifty cents per member to the American Farm Bureau Federation, which is the national organization.

Q. Have you any farmers in Cook County paying fifteen dollars a year to your organization?

A. Yes, sir. About 1800.

Q. Have you any farmers in Palos Township paying those dues?

A. Well, now, I couldn't tell you by townships but if it is a farming or truck gardening section I would say we have. I believe we do have.

Q. Do you have any members in the vicinity of Beaverville?

A. Yes, sir.

Q. Kankakee?

A. Yes, sir, and in Chicago too. I am a member myself. I have to be.

Q. Do you have in this 72,000 a number of people who are not farmers?

A. Not so many. Usually the members are absent land owners who live in town but there are in some cases merchants who do belong.

Q. Now, you stated that the fact that low rates are presently available on barge grain into Chicago for movement [fol. 1081] east does not hurt or adversely affect other farmers in Illinois?

A. I don't see that it does, no.

Q. Do you think that a farmer, say, ten miles west of Kankakee or, we will say, shipping out of Kankakee at the local rate of 34½ cents to New York is disadvantaged in comparison with the farmer who hauls his grain or has it trucked to Morris and then ships it via barge and then under this present low reshipping rate of 26½ cents hurts that farmer at Kankakee?

A. Well, now, that farmer that you speak of west of Kankakee can truck over to the river the same as these others do.

Q. Well, I am talking about the farmer who uses the railroad.

A. Well, the farmer don't ship to New York direct.

Q. Well, he sells his grain on the basis of shipping it direct to New York, does he not?

A. Yes.

Q. And in that case the grain would pay a 34½ cent local rate?

A. Out of Chicago?

Q. Yes.

A. Yes.

Q. Well, out of Kankakee. Kankakee takes the Chicago rate.

A. Well, I assume that is the same rate. I don't know what it is.

Q. Well, Kankakee takes the Chicago rate, you know that?

A. Yes.

Q. Now, then, the grain that has been hauled into Chicago [fol. 1082] by barge could move by rail from Chicago through Kankakee to the east and pay only 26½ cents as the rail factor out of Chicago?

A. Well, it don't make any difference whether he lives at Kankakee or Champaign. His bid on grain is no different whether it is 34 cents or something else.

Q. Don't you think that he is hurt by that disadvantage?

A. I don't see that the farmer is.

Q. Even though he gets about six cents less than the other fellow who is located perhaps 56 miles farther and who gets all this extra and additional transportation at a lower charge than this man shipping out of Kankakee does?

A. I can't see where that man will get any more or less for his grain regardless of the river.

Q. Well, so far as your organization is concerned that is all right. You are satisfied to have one farmer have to pay on the higher basis.

A. That is a geographical location. Now, every farmer in the State of Illinois don't pay the same freight rate into Chicago on his grain, we know that.

Q. But looking at it from the standpoint of the rail transportation how can you justify the higher charge for the man who is situated nearer to New York than the fellow whose grain coming from this point in the west would move through Kankakee?

A. Well, he has got a natural advantage there.

Q. And as far as you and your organization are con- [fol. 1083] cerned that is all right?

A. Yes, sir. If he has got a natural advantage let him keep it.

Mr. Day: That is all.

By Mr. Cole:

Q. Mr. Baxter, I hand you exhibit 3 that has been introduced in this case. Will you please look at "Chicago" shown on that exhibit?

A. Yes.

Q. Is there grain raised in Illinois by members of your organization just outside of that place of Chicago, not within that black line area but closer to Chicago than that black line area, almost, you could say, local grain to Chicago, just outside, just west there?

A. I question whether there is or not, Mr. Cole. What little grain,—most of that is truck gardening. If they raise any other grain they probably feed it. I question it.

Q. How far west of Chicago would we have to get before we would get into a territory where there is a substantial production of grain?

A. Oh, I think west of Joliet and probably north.

Q. That black line there, would you say that the area within that black line area would indicate where grain is produced?

A. Well, I question whether there is very much grain in that line as close as you have it to Chicago there; that is, this section in here.

By Mr. Day:

Q. What point is that that you say there is no grain? [fol. 1084] A. I question whether there is very much commercial grain raised in the south end of Cook County and that line does include part of that. That is mostly truck gardening.

Q. I don't think you know much about the south end of Cook County, do you?

A. Well, I have lived out there for twenty years.

Q. You didn't know where Palos Township was and I don't suppose you know where Orland Township is?

A. Yes, I know where they are but I don't know if they are in that 1800 members in Cook County.

Q. And around Tinley Park and Mokena?

A. Yes, sir.

Q. Aren't they good grain producing sections?

A. Well, there are small tracts of land out there most of them.

Q. Well, aren't they as big as anywhere in the State of Illinois?

A. They may be but their grain isn't generally,—I say grain isn't generally raised out there on a large scale.

Mr. Day: I don't think you know anything about it, sir.

By Mr. Cole:

Q. Well, all right, what grain there is raised out there, let us suppose we start with a carload of grain raised somewhere within the black area on exhibit 3 close to Chicago, so that the man has a short truck haul to Chicago and he hauls his grain to Chicago. The other man, your member, [fol. 1085] is located down around Morris, Illinois, and he ships his grain over the waterway and he gets his grain to

Chicago, so that both of those men have their grain at Chicago. Do you think there is any difference as between their situations which would entitle either one of the two men to have a different freight rate east of Chicago on their corn, just east of Chicago now?

A. Are you speaking of this fellow here shipping in by rail or by truck up there?

Q. He is just trucking it in from a short distance outside of Chicago and not a greater distance away from Chicago.

Exam. Taylor: And not a greater distance away from Chicago than Morris is?

Mr. Cole: No, he is closer than Morris.

Mr. Day: Mr. Examiner, he wouldn't have to truck it. He has got the Chicago rates. The Chicago rates apply down to Kankakee; that is 56 miles from Chicago.

By Mr. Cole:

Q. Both of those men get their grain shipped to Chicago now. Can you see any feature which would entitle either one of those fellows to a lower freight rate via rail out of Chicago when they move their grain out of Chicago?

A. Well, what do you mean "any lower freight rate", mile for mile? One is closer than the other. Do you mean an equal freight rate?

Q. Can you see any reason why either one of them should have a different freight rate than the other man to the [fol. 1086] same destination? Both of them, we will say, ship to Baltimore.

A. Of course, the mileage would make the difference.

Q. I said both men were shipping from Chicago to Baltimore.

A. Oh.

Q. Two carloads of grain, one carload was trucked in from a short distance outside of Chicago and was unloaded there at Chicago and put in a railroad car. One carload came up the Illinois River and was also put into a railroad car at Chicago. We have got two cars of corn. The corn is the same kind of corn. The corn is sold to the same man in Baltimore, for instances. Both cars move from Chicago to Baltimore behind the same engine. Can you see any reason why there should be a different freight rate on either

one of the two cars from Chicago to Baltimore after it gets into Chicago?

A. Of course, the farmer don't know where that goes but the fellow that trucks his grain in there probably wouldn't have any billing and there would be a penalty on him, I assume.

Mr. Day: Well, even if he had the billing he wouldn't get any lower rate.

The Witness: Well, what I understood Mr. Cole's question was——

By Mr. Cole:

Q. Look, Mr. Baxter, on your direct you stated that you were the director of the transportation department. Now, I understood from that you are a transportation man and I am trying to limit my question to the matter of transpor-[fol. 1087] tation and we have got both cars of corn,—remember that I put it to you this way, that both of those cars of corn were loaded with corn at Chicago and they are both of them moving to Baltimore and I want to ask you whether either one of those cars should receive a different freight adjustment from Chicago to Baltimore than the other car? I am asking you that as a transportation man.

A. Whether I think there should be?

Q. Yes.

A. No, I don't think so.

Mr. Cole: That is all. Thank you, Mr. Baxter.

By Mr. Brown:

Q. Mr. Baxter, just a minute. How many actual grain growers, that is, surplus grain for market, are included in these 72,000 farmers in your organization?

A. I don't believe I could tell you that, Mr. Brown.

Q. Could you make a fair estimate?

A. I would say—well, I don't know whether I could give you a correct answer or not, a correct guess.

Q. Fifty per cent of them?

A. Maybe half of them.

Q. Fifty per cent of them?

A. Fifty per cent of them.

Q. Scattered all over the state?

A. Well, I think probably that would cover from the south third of the state north. I think our membership is [fol. 1088] probably heavier in the central part of the state.

Q. Well, does your membership extend up as far as this Illinois valley around Dwight and Mazon and Morris?

A. Yes, every county in the state.

Q. And there are actual grain growers of surplus grain for shipment?

A. Some of our members are, yes.

Q. Well, I am talking about this part of the country around here up in the Illinois valley?

A. Oh, well, maybe I misunderstood your question. Did you ask me how many were in the Illinois valley in that territory?

Q. First I wanted to know how many of the 72,000 farmers who are members of your organization are actual growers of surplus grain for shipment?

A. Well, I would say making a hazard guess on it at 50 per cent.

Q. And you may be able to tell me how many of those 72,000 are in this Illinois Valley and are now making use of that transportation system for their surplus grain?

A. I couldn't tell you how many surplus grain growers there are in there.

Q. That is all I am interested in. Now, has the Illinois Agricultural Association, has it title to any grain handling facilities that you know of as an association?

A. I don't know whether the title is in the name of the Illinois Agricultural Association or not but we are inter- [fol. 1089] ested in the Allied elevator at Morris.

Q. Oh, they have an interest in that?

A. Well, they had the lease when the Farmers National quit business.

Q. And then does the Illinois Agricultural Association lease it to the—or release it to the Cooperative Allied Grain Dealers Corporation?

A. Well, it is leased to them. Now, I can't tell you,—I never saw the lease or anything else but I might be correct.

Q. Well, now, from whom would the Illinois Agricultural Association lease this elevator?

A. From whom?

Q. Yes.

A. Well, as I say, my information about that elevator

is very meagre but as I understand it the lease was obtained through the Farm Credit, I believe.

Q. Farm Credit Administration?

A. I think so.

Q. They hold title to the property?

A. I think so but, as I say, my information is very meagre on that.

Q. You said in your direct testimony, or left the inference, probably everybody here not on your side of the house are endeavoring to take away the natural advantages of the Illinois waterway. Do you say that is the position of the [fol. 1089a] Chicago Board of Trade itself on the testimony you have heard here?

A. Well, I don't know what the Chicago Board of Trade's position is. I suppose you could state it on the record.

Q. Well, I want to know if when you said that you had in mind the Chicago Board of Trade and, if you did, was it based on anything that you heard in this hearing?

A. Well, I didn't say anything about the Board of Trade.

Q. No, but you said the people here were wanting to take away the natural advantages of this transportation system over the Illinois waterway. Now, didn't you say that?

A. No, I did not. I don't recall that I said that.

Q. All right.

A. I was talking about the elevator operators who testified in here yesterday.

Q. Oh, the country fellow himself?

A. Yes.

Q. Well, he is not a member of your organization, presumably?

A. No. I made reference to him, that he was giving no better prices to the farmer.

Q. I see.

A. But I didn't infer anything about the Chicago Board of Trade.

Q. Now, Mr. Baxter, do your duties extend beyond just the Illinois Agricultural Association?

A. Yes. I handle transportation matters for the Illinois Farm Supply Company and other subsidiaries.

[fol. 1089b] Q. Are they subsidiaries of the Illinois Agricultural Association?

A. Yes.

Q. And are they the cooperative that is used in the handling of grain for shipment?

A. Are you speaking of the Illinois Grain Corporation?

Q. I am talking of any subsidiary that you have in mind by which you are employed in connection with rates for the shipment of grain by rail or by water.

A. I don't know that any of our organization owns any facilities for grain shipping.

Mr. Brown: That is all.

By Mr. Bradford:

Q. Mr. Baxter, in your testimony in Atlanta in January in docket 17,000, Part 7-A, wasn't it your position that if the rates on grain and grain products from Oklahoma and Kansas and the western territory were reduced to the southeast that it would either shift the business from Illinois to the southwestern territory or if the Illinois territory wanted to stay in the business that it would result in a lower price to the producer in Illinois?

A. I think I did testify to that, that it would either pay a lower price or we would lose the business. Our position was somewhat the same as yours, I think, at that hearing.

Q. Now, then, can you tell me what difference there would be between a different level of rates from Oklahoma and [fol. 1090] Illinois to the southeast and a different level of rates from one section of Illinois to Chicago as against another section bearing this in mind that the producer in Illinois selling his grain to Chicago sells on the Chicago price less the transportation charge? Now, if that is true wouldn't the producer who has the benefit of the lower railroad level of rates profit against the producer who hasn't got that benefit?

A. Well, the producer does profit that can use the river, it has been shown here, but that don't in any way affect the movement of grain from the farmer who hasn't got that advantage to the market.

Q. But it affects his price, doesn't it?

A. I don't see that it does.

Mr. Bradford: That is all.

Mr. Wheat: I have got one question that I would like to ask. I want to go a little further than Mr. Cole did.

Q. Assuming, Mr. Baxter, that grain was trucked from the vicinity east of Dwight to Morris, Illinois and was moved from Morris, Illinois to Chicago by barge, in your

opinion should that grain in moving east of Chicago take a lower rate than grain which might be moved from some farm to Chicago by truck direct?

A. Well, I don't know that it would. I don't know what the truck rate might be on that.

Q. I am talking about the rates east of Chicago. I said should it take a lower rate east of Chicago when it was [fol. 1091] trucked direct from the farm to Chicago than if it moved by truck to Morris and thence barge to Chicago?

A. I think I answered that a while ago.

Q. Mr. Cole asked you about a shipment moving direct by truck into Chicago as against a shipment moving in by rail.

A. My answer would be the same.

Mr. Wheat: That is all.

Exam. Taylor: Anything on redirect? Anything further? Witness excused.

(Witness excused.)

Robert Isham Randolph was sworn and testified as follows:

Direct examination.

By Mr. Childe:

Q. Will you state your name, please?

Mr. Enoch: I would like to know in whose behalf Col. Randolph is here?

Mr. Childe: He is called in behalf of the Mississippi Valley Association, protestant.

Exam. Taylor: Proceed.

By Mr. Childe:

Q. State your name, please.

A. Robert Isham Randolph.

Q. Where do you live?

A. Chicago.

Q. What is your occupation?

A. I am a civil engineer.

Q. How long have you been engaged in that profession? [fol. 1092] A. 35 years.

Q. For whom are you appearing in this proceeding?

A. For the Mississippi Valley Association.

Q. What is the Mississippi Valley Association?

A. It is a voluntary organization of shippers, individuals, firms and business men represented throughout the states of the Mississippi Valley, with headquarters at St. Louis.

Q. Are you a member of that organization?

A. I am a member of the executive committee, yes.

Q. How long have you been a member?

A. I have been a member of the organization since the organization was formed some 21 years ago.

Q. Have you had any official connection with the organization?

A. I was president of the organization from 1931 to 1938, inclusive.

Q. What is the purpose of the Mississippi Valley Association?

A. I can best express it by reading the declaration of purposes.

Mr. Day: I don't see how that is relevant, Mr. Examiner, and I object to it.

Exam. Taylor: Can't you state it shortly, Colonel?

The Witness: Yes.

Exam. Taylor: Just in a few words rather than reading it all.

The Witness: The purposes and objectives of the Mississippi Valley Association are the promotion, encouragement and development of commerce and industry and agriculture in the area drained by the Mississippi River and its tributaries, in the promotion and development of foreign and domestic commerce in the mid-continent section, in the improvement of the economic conditions of the region.

[fol. 1093]

By Mr. Childe:

Q. Has the Mississippi Valley Association taken any action in regard to this proceeding?

A. Yes. It took action at its annual meeting on the 17th of October last in adopting a report of the transportation committee directing that the Mississippi Valley Association participate in proceedings now before the Interstate Commerce Commission involving rates on grain from Chi-

cago to the east, in opposition to the proposal of the railroads to charge higher rates on grain which has had a prior haul into the market by barge than on such grain which has moved into the market by rail or lake, thus taking away from producers and shippers the economies of river transportation into the market by rate penalties on the subsequent outbound movement of such grain.

Mr. Enoch: May we have the membership of the transportation committee stated at this time?

Exam. Taylor: Did you hear that, Mr. Childe?

Mr. Childe: Was that request directed to me?

Mr. Enoch: Yes.

Mr. Childe: I do not have the list. I can supply it for the record if you desire it.

[fol. 1094] Mr. Enoch: Are you on the transportation committee?

Mr. Childe: I am chairman.

Q. Have you had any connection with the construction of the Illinois waterway, Col. Randolph?

A. Yes.

Q. State what that has been.

A. Well, practically all my life has been associated with it. I grew up with the construction of the Chicago drainage canal. My father was chief engineer during the entire period of construction. I saw the first shovelful of earth taken out and the water pumped in. I was employed by the Sanitary District from 1904 to 1908 on the Chicago River improvement, bridge construction and river engineer and deepening. I made the original surveys for the Calumet Sag canal. Thereafter I was secretary of the Internal Improvement Commission of Illinois.

Q. Is that an official body?

A. Yes. From 1908 until 1911. In 1911 the Internal Improvement Commission was merged into the Rivers and Lakes Commission of Illinois and I continued as secretary of that until 1913.

Q. Was that likewise a State of Illinois department?

A. A state department yes, with jurisdiction over the rivers and lakes of Illinois. During that period, in 1908, when I was secretary of the Internal Improvement Commission we had the vote on the constitutional amendment to permit the issue of twenty million dollars in bonds for the construction of the Illinois waterway. I participated

[fol. 1094a] in the preparation of the preliminary plans for that and in the campaign for the passage of the constitutional amendment.

Q. Since that time have you had anything to do with it?

A. Since that time I have been in general practice as a consulting engineer on river and harbor work, land drainage and reclamation and have been associated with the project for the improvement of the Illinois River in connection with my membership on the Harbors and Waterways Committee of the Chicago Association of Commerce and my continued membership in the Mississippi Valley Association and I have been familiar with the history of that development throughout those years.

Q. Have you had official connection with the Chicago Association of Commerce other than this committee that you speak of?

A. Yes. Since about 1914 I have held committee memberships in the Association of Commerce on the Harbors and Waterways committee and in 1930 and 1931 I was president of the Chicago Association of Commerce.

Q. Have you since been a member of this waterways committee?

A. I am now.

Q. Will you describe briefly the Illinois waterway and its history and purpose?

Mr. Day: Mr. Examiner, this is all very interesting but I cannot see the relevancy or materiality of it.

Mr. Cole: I can't either.

[fol. 1095] Exam. Taylor: We have had quite a bit of history in this case already, as I see it. Why can't you just skip that? We know where the Illinois River is now and we know about its predecessor and when the first boat started and when it stopped and everything else. Can't we skip that and go to the meat of this witness' interest in this proceeding?

Mr. Childe: It seems to me that this is the crux of the case, to show what the waterway is for, but, of course, I will abide by the Examiner's ruling.

Mr. Belnap: Might I make this observation, Mr. Examiner? We have had witnesses supporting the respondent who dealt with testimony that portions of the Alton Railroad would have to be abandoned in the event that eastern lines would not have to make changes in their rates and it was ruled that it was relevant.

Mr. Day: Well, at least the Alton is a railroad and it is railroad transportation that the Commission is investigating here.

Mr. Belnap: What it is investigating is the application to restrict the application of rail rates on grain that has had a movement by water on a certain stream.

Exam. Taylor: I was just trying to shorten it. I wasn't trying to hold it out or to rule it out. I was trying to shorten the hearing, if possible.

Mr. Belnap: I would like to have the evidence go in. If it has a bearing I think it is relevant.

[fol. 1096] Mr. Day: I would like to point out further, Mr. Examiner, that this water transportation is wholly unregulated and there are no charges via the water lines, if there are any such things, filed with the Commission in this case, or before the Commission in this case. It has nothing to do with this proceeding.

Mr. Belnap: Well, neither are the rates of the Alton Railroad up to Chicago in this proceeding and yet we have had a great deal of testimony about them and Mr. Day asked a great many questions about them.

Mr. Bradford: There has been no denial but what the Illinois River is here. Now, if it is here I don't see what is the use of going into all the history of why it is here. It is here.

Exam. Taylor: All right, make it short.

By Mr. Childe:

Q. Will you do that, Colonel?

A. I will have to go back to Marquette and Joliet to give its history.

Exam. Taylor: I don't want you to go back that far.

The Witness: I won't go back that far but I think it is germane to point out that the governmental acts in relation to the development of the waterway began with the Ordinance of Virginia of July 13, 1787 accepting the cession of the Northwest Territory and that Ordinance provided that the navigable waters leading into the Mississippi and the St. Lawrence and the carrying places between shall be com-

[fol. 1097] mon highways and forever free as well to the inhabitants of the said territory as to the citizens of the United States themselves and any other state that may be taken into the Confederacy without any tax, impost or duty

thereon. The Ordinance further fixed the territorial boundary between Illinois and Wisconsin as the parallel touching the southern end of Lake Michigan but when the state was admitted to the Union in 1818 the northern boundary was moved north to parallel 42 degrees and 30 minutes, giving to the state a port on Lake Michigan and putting the waterway entirely within the territorial limits of a single state. Later Congress made a grant of land by the Act of March 30, 1822, five alternate sections on each side of the route of the canal, amounting to 2,841,000 acres.

By Mr. Childe:

Q. On what date was it that the Act was passed by Congress authorizing the State of Illinois to construct a canal?

A. Well, they made the grant right away through the public lands on March 20, 1822. The Act authorizing the construction was March 2, 1827.

Q. When was construction begun?

A. July 4, 1836 and it was opened to traffic in the spring of 1848 on the high level six feet above the lake level.

Q. Pardon me, did you mean 1936?

A. 1836.

Q. Proceed.

[fol. 1098] A. The summit level was lowered in 1871 to provide a gravity flow. The drainage canal was started by the enabling act of 1889 and completed when the water was turned in in July, 1900. The constitutional amendment for the twenty million dollar bond issue was voted in November, 1908, but the actual construction—on the authorization of the sale of the bonds,—and the construction was not started until about 1930, as I recall it. It was opened to navigation in the spring, or in June of 1933. In April 1930, the federal government took over the Sanitary District canal and the Illinois waterway and made it an adopted project from Lake Michigan and the then adopted project for the lower Illinois River at LaSalle and in that Act they made a declaration that it should have enough water diverted from Lake Michigan to make it a commercially useful waterway.

Q. My notes here indicate in 1871 there was an enlargement of the canal?

A. I mentioned that. It was cut down so that the summit level,—so as to give a gravity flow and it was finished in 1871.

Q. Who paid for that improvement?

A. The City of Chicago paid the entire cost of that lowering of the summit level. It was afterwards reimbursed to the city, after the fire.

Q. Has there been a continuous history of effort to develop the waterway over the whole period that you have covered by your testimony?

[fol. 1099] A. There has been a continuous effort practically since Marquette first suggested that cutting a canal across that territory would join the waters of the Illinois with the waters of Lake Michigan.

Q. Have there been any further improvements since the federal government took over the waterway?

A. The Calumet Sag canal has had side tracks put on it, and an improvement project for enlarging the Calumet Sag canal and the Calumet River.

Q. Are further improvements authorized and unfinished?

A. Well, the lower river has been improved, the two old state dams at Henry and Copper Creek have been abandoned, the two federal dams at La Grange and Campsville have been replaced by a new dam at Peoria and a new dam at LaGrange, providing for larger locks, 110 feet wide and 600 feet long, with nine feet of water over the mitre sills.

Q. Have you covered the Chicago end of the line also?

A. The Chicago River was widened and deepened as a part of this process. The federal government spent about a million and a quarter on that enlargement and the Sanitary District about thirteen million. The old center pier bridges were removed and the old river given a least width of 200 feet and a least depth of 126 feet.

Q. What was the purpose of the last improvement of the waterway that you testified about?

[fol. 1100] A. The basic purpose of the construction of the sanitary and ship canal was for sanitation but it was given ship canal dimensions in the enabling Act for the purpose of creating navigation in the port of Chicago and extending it throughout the continental divide, to enable the construction of this lakes to the Gulf waterway.

Q. What was the underlying purpose of constructing a navigable waterway in the Illinois River?

A. For the promotion and development of the commerce of Chicago and the State of Illinois.

Q. In that answer what kind of commerce are you speaking of,—all kinds or any particular kind?

A. All kinds of commerce, water borne commerce.

Q. In seeking and obtaining the funds for this construction did you have in mind the movement of agricultural products on the waterway?

A. Yes, to Chicago, which is one of the great central markets.

Mr. Childe: Mr. Examiner, we have some citations to which we wish to refer, of the declared policy of Congress in making the Illinois and other navigable waters of the country, and of improving the Illinois and other navigable waters of the country, taken from official documents and it would save time if we would be permitted to refer to those documents on brief. Will that be permitted?

Mr. Enoch: I think if there is anything going into the [fol. 1101] record I think it ought to go in in the shape of an exhibit.

Mr. Cole: Well, if it is to be referred to as a matter of fact, which we should know, of course, then it should be in the record, or is it going to be used simply as argument about something?

Mr. Day: Mr. Examiner, I would like to know the pertinency and relevancy of all this? Just what is it addressed to? Is it to show some specific violation of the Interstate Commerce act resulting from these proposed rates? I cannot see that it is pertinent here.

Mr. Childe: If I may try to answer those two gentlemen, the facts to which we wish to refer are that Congress has declared by statements and by official reports dealing with those statutes recommended for passage that a certain policy was followed with reference to the development and use of the inland waterways. We rely on that as outlining the declared substantial policy and we wish to use it in argument as supporting our view that the Commission should so adjust freight rates by a rate as to encourage the use of the inland waters.

Mr. Day: Well, now, if you are referring to Section 500, doesn't it say that the Commission shall fix such rates as will promote and foster both rail and water transportation?

Mr. Childe: Yes, Section 500 is one thing to which we wish to refer. Another thing is the Inland Waterways Cor-

poration act and the report of the committee recommending [fol. 1102] it for passage and explaining its purpose, and we also wish to refer to the Cullom report recommending the passage of the original Interstate Commerce act, dealing therein with its views as to inland water transportation and its desirability.

Mr. Day: If your Honor please, I submit that all this borders on the frivolous.

Exam. Taylor: You wish to make use of that only in your brief, do you not?

Mr. Childe: That is correct.

Mr. Enoch: Are these acts of Congress?

Exam. Taylor: He said they were.

Mr. Cole: He referred to some reports of different committees. Acts of Congress we are already bound by no matter we sit here and admit them or anything else, we are bound by them, they are acts of Congress, but these reports, we don't want anything to do with them.

Exam. Taylor: What kind of committee reports do you want to make reference to?

Mr. Childe: Of the Interstate Commerce committee of the House and Senate recommending the legislation to which I have referred for passage.

Mr. Day: I don't understand they are pertinent except as an aid to the interpretation of a statute.

Mr. Childe: That is exactly what we want to use them for.

Mr. Belnap: Couldn't we have the argument at argument [fol. 1103] time and go on with the hearing?

Mr. Cole: He is asking to do something.

Mr. Belnap: Well, you are arguing with him about what is pertinent and what is not pertinent.

Mr. Day: I have an objection, Mr. Belnap.

Exam. Taylor: You have given reference to all that you wish to refer to, have you not?

Mr. Childe: Yes, but there are certain passages in there that I wish to quote.

Exam. Taylor: On this record?

Mr. Childe: In brief.

Exam. Taylor: On brief?

Mr. Childe: To save time, instead of putting it in the record.

Mr. Enoch: The way to save time is to do what all the rest of us would have to do; if we wanted to offer in evi-

dence in the case an excerpt from a committee report we would have to put it down in an exhibit and submit it and this would have been over before the discussions started. Now, I don't propose, whether I am overruled or not, to allow somebody to come in and put in some indiscriminate committee reports.

Exam. Taylor: Well, Mr. Childe, did you read the recent decision of the Supreme Court in the Chicago Livestock case, particularly Justice Stone's closing statement? I think it has peculiar meaning in what you are trying to do [fol. 1104] right here. He closed his decision with the statement about some of the parties in that case had attempted to ask the Commission to permit them to show on the record the conditions and costs and things of that character at stock yards throughout the country. The Interstate Commerce Commission would not permit them to go into that matter and in justifying, or in approving the Commission's action on that matter Mr. Justice Stone said: "There is a practical limit to which inquiry into collateral issues may be extended and pursued on the trivial." I think that has peculiar meaning in this question we have before us right now. If you wish to refer to any act of Congress or any decision of the Commission that has a real definite connection with this case I think you can do it. I think there isn't anybody in the room that would say you cannot do it, but when you commence to go out and get way out afield into matters that are more or less collateral I don't think that I can permit you to do that. That is my view.

Mr. Childe: Do I understand you to state that it is proper to refer to the statutes and Commission's reports? What is your ruling in reference to the reports of the Interstate Commerce committee in the House?

Exam. Taylor: Well, that is more or less a collateral matter. That is not an action by Congress. That is something before the thing became an act, leading up to it. Now, if you want to put it in, as I said you should have [fol. 1105] brought it here and put it in writing and let it all be on the record.

Mr. Childe: Well, we have it here but we haven't had time to put it in exhibit form.

Exam. Taylor: Mr. Cole, would you be willing to let him have ten days to put it in?

Mr. Cole: I would object to it if it were offered, if it were part of a committee's report, because it is definitely irrelevant; and, following up your citation on that, this case that you referred to, 227 I. C. C. 716, is the case that the Examiner referred to.

Exam. Taylor: I was referring to Justice Stone's decision.

Mr. Cole: Yes, you are referring to it in the Supreme Court.

Exam. Taylor: Yes.

Mr. Cole: I am referring to the decision in the same matter before the Interstate Commerce Commission.

Exam. Taylor: Yes.

Mr. Belnap: Might I be clear on this, Mr. Examiner? Are the comments and citation of authority directed to the general matter of testimony relating to the development of waterways and the purpose for which it was developed, or was it related to the committee reports?

Exam. Taylor: No, committee reports. If they object to that I cannot receive them.

By Mr. Childe:

Q. Col. Randolph, what has been the total cost of the improvement of the Illinois waterway for navigation pur- [fol. 1106] poses up to date? If you don't know it exactly state approximately.

A. Well, the drainage canal channel proper was approximately $60,000,000. The state bond issue of $20,000,000 was spent on the section between Lockport and Utica and that was supplemented by about seven and a half million dollars of federal funds.

By Mr. Day:

Q. Now, was that, so that we will understand that, just in the interest of clearing it up,—are these the figures for the recent work on the canal? You don't go back to 1833, do you?

A. No, that is not including the old Illinois and Michigan canal.

Q. This is the recent improvement?

A. I am talking about the sanitary and ship canal and the recent improvement on the river between Lockport and Utica.

Q. Well, it is the same waterway?
A. Same waterway.

Mr. Day: Thank you.

The Witness: I can't give you the totals since the beginning of this waterway. The two dams at Peoria and LaGrange I think have an aggregate cost of about six million, the new ones. The other stuff that has been scrapped, I don't know what the aggregate cost of that would be.

By Mr. Childe:

Q. During this same period has the federal government expended money on the improvement of the Great Lakes?

A. Well, it has been spending money on the improvement [fol. 1107] of the Great Lakes ever since it started them from year to year every year.

Exam. Taylor: Are you going into that, to ask him what the costs there are?

Mr. Childe: I was going to ask him next what the total cost was, if he knew.

Mr. Day: Since when?

Mr. Childe: Since the beginning.

Exam. Taylor: I think you are going too far afield now.

Mr. Childe: Do you rule the question is improper, Mr. Examiner?

Exam. Taylor: I rule you are getting too far afield on matter that is too much collateral.

By Mr. Childe:

Q. Has it been possible as a practical matter to navigate the Great Lakes to and from the Chicago harbor without the federal improvements to which you referred?

A. No, it would not have been possible on any of the lake harbors. They have all been improved by federal funds and the inter-lake channels also on the St. Clair and Detroit River and St. Mary's river and the locks at the Soo were not navigable.

Mr. Childe: That is all.

Exam. Taylor: Cross examine.

Cross-examination.

By Mr. Cole:

Q. Mr. Randolph, do you know what the aim was, or the plan behind this improvement of the Illinois River and the [fol. 1108] connecting link up to Chicago to connect the river with the lake?

A. Yes, the improvement of the river for navigation.

Q. What was in the mind in connecting the river with the lake? What did anybody expect to happen when they connected the river by the canal with the lake?

A. They expected through commerce from the lakes down the river and down the Mississippi Valley and down to the Gulf.

Q. That could go in the reverse direction, too, couldn't it, the commerce via the river, thence through the canal and thence over the lake?

A. Yes, both ways.

Q. But to connect the river with the lake. Are you familiar at all with the methods of making freight rates for the movement of different kinds of commerce to and fro over the railroads?

A. Oh, I am not a rate expert.

Mr. Cole: That is all. That is all I have, thank you.

By Mr. Day:

Q. Col. Randolph, in your figures showing the cost of what I will call your modern construction and improvements to the canal or waterway did you include the Calumet Sag channel?

A. No.

Q. What would be the cost of that?

A. Well, I think the present approved project I believe the estimates run something like thirty million for that.

Q. You mean there has been thirty million dollars expended?

[fol. 1109] A. No, the estimates for the enlargement.

Q. Is that thirty million in addition to what has already been spent?

A. Yes.

Q. How much has the cost been up to date?

A. I think approximately fourteen million was the cost of the Calumet Sag channel.

Q. That was built when? Was it started about 1914?

A. About 1914, yes.

Q. And in the movement of grain from points on the Illinois River to elevators around South Chicago the movement would be through that particular channel, wouldn't it?

A. That would be the logical route for it, yes.

Mr. Day: I think that is all I have, thank you.

By Mr. Enoch:

Q. Give me the total figure of expenditure beginning with and including the $20,000,000 put into this waterway improvement of Utica east which is used to transport grain from points Utica east to Chicago, including the expenditure of the money put into the Calumet Sag.

A. Well, there was added to the $20,000,000 a federal expenditure of about seven and a half million on the route from Lockhart to Utica. I couldn't proportion the cost of the main drainage channel from Lockport to the Calumet Sag.

Q. Well, about how much? These figures don't mean much to me anyway after you get over a million.

[fol. 1110] A. Well, the total cost of the main drainage channel was about $60,000,000. The Sag is about half of this, which would give you $30,000,000 to the Sag and another $14,000,000 through the Sag canal.

Q. Would it be safe if we would state it this way, that for the purpose of enabling shippers to transport commodities east from Utica over this waterway to Chicago that the taxpayers of Illinois and the United States spent at least $60,000,000?

A. No, because you cannot charge all that to that single purpose. The primary purpose was a sanitary purpose and the canal, the navigation of it, was a by-product through the continental divide.

Q. Well, I mean to enable any shipper to use the waterway from Utica east.

A. Well, as I have stated——

Q. One of my colleagues has just given me a figure of $136,000,000. Has that much money been put into that waterway between Utica and Chicago?

A. There has not been, no.

Mr. Day: To refresh your recollection, I marked the amounts you gave: 60 million, 25 million, seven and a half

million, just recently for two dams 6 million around LaGrange and Lockport.

The Witness: He is talking about from Utica east to Chicago. Those two dams are down below Peoria.

Mr. Day: Oh, I see. You mentioned "LaGrange." I [fol. 1111] thought it was right up around here.

The Witness: No, it is near Peoria.

By Mr. Enoch:

Q. Could we say safely between sixty and a hundred million?

A. Yes, roughly, but not all of it was particularly chargeable to navigation because the primary purpose of the main drainage channel was sanitation, to cut through the rock back of the continental divide, and the waterway was a by-product of that sanitary necessity.

Q. Well, can we say this, that to get from Utica to Lockport at least $30,000,000 was put in for this transportation?

A. Well, there was at least 27½ million from Utica to Lockport.

Q. How many miles is that?

A. It is about 63 miles.

Q. It would be a pretty expensive railroad if you double tracked it, wouldn't it, if you put half a million a mile in it?

A. It would be a pretty expensive railroad, yes.

Mr. Enoch: That is all.

By Mr. Brown:

Q. Col. Randolph, you have just said, I believe, that the improvement of the Illinois waterway was first a sanitary project?

A. No.

Q. From the mouth of the Chicago River down?

A. The ship canal through the continental divide was a sanitary project first. That is, from Chicago to Lockport. [fol. 1112] Q. Yes, all right. And then the question of navigation or transportation was secondary?

A. Yes.

Q. Well, now, these recent improvements that have been made at the -outh of the river, wasn't that also made for sanitation?

A. That gate at the mouth of the river is not in the aid of navigation at all. It is an impediment to navigation. That was a thing that was forced on us by the Supreme Court decree limiting the withdrawal of water from Lake Michigan to 1500 cubic feet and was built to limit the flow of water from the lake into the river and it is not chargeable to navigation.

Q. And also to prevent pollution?

A. Also to prevent pollution of the water supply by the water flowing from the river.

Q. Now, are there any expensive locks between here and Peoria?

A. Yes, there are five locks. One at the end of the drainage canal.

Q. At Lockport?

A. At Lockport; Brandon's Road below Joliet; a lock at the mouth of the Kankakee at Dresden Heights and the lock and dam at Marseilles and the lock and dam at Starved Rock. Then in the lower river there is the lock at Peoria, lock and dam at Peoria and one at Henry—one at La-Grange, I mean.

Q. Now, is there any charge made for the service of putting these river boats through those locks?

[fol. 1113] A. No charge.

Mr. Brown: That is all.

Exam. Taylor: Anything on redirect?

Mr. Childe: No, sir.

Exam. Taylor: Witness excused.

(Witness excused.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: It is very evident, gentlemen, that we can not finish here. The free copy for respondent goes to Mr. Cole?

Mr. Cole: Yes.

Exam. Taylor: And the free copy for the protestants to Mr. Belnap. Now, as to a future hearing in this proceeding, there are a number of reasons why I cannot set it at this time, among which I will state, as you all know, there is going to be a grain hearing in Chicago in the beginning of the new year. Another reason is that I haven't been home since the first of December and I don't know what

the Commission's docket is, how it is fixed up as to available dates in Washington. In those circumstances I don't see anything to do but to adjourn this hearing to such time and place as the Commission may see fit to fix. Now, if any of you have any statement to make on that briefly, or if you will let it go at that and want to take it up with the Chief Examiner, it is perfectly satisfactory to me.

Mr. Enoch: Do I understand now from Mr. Belnap's [fol. 1114] statement that only one of these shippers will have a man take the stand, is that right?

Mr. Belnap: I thought I would have one of them speak for the group, Mr. Enoch. They have been together in this matter continuously and he can state all the facts. I thought that would be satisfactory.

Mr. Enoch: I appreciate the fact that it is up to us to show or see that the facts get in here that we think are important. We have no right to rely on the other parties.

Mr. Belnap: You are perfectly safe in doing so, yes.

Mr. Enoch: We are very anxious to have the character of the transportation agency which moved this grain up the river described as to the facts and it may be that if these protestants do not undertake to present those facts we will find ourselves in the position where the burden will be upon us.

Exam. Taylor: Have you anything to say, Mr. Brown?

Mr. Brown: I have, if you please. Representing an important factor in this proceeding and realizing that more than two months of the suspension period has already passed I want the Commission to know that I think that the adjourned hearing should be held as early as can be with the itinerary or the commitments of the present Examiner. I don't know how soon you may be released but I want the Commission to know that we don't want a moment's delay because of some other case, whether it is the grain case or not. Now, this other case comes up on a [fol. 1115] petition of the western carriers, the one you have in mind. It involves 17,000, Part 7. It was first set for January 9th and the Commission set it forward for January 3rd next year. Our particular case they set back instead of setting it ahead and I just want them to know that I think it ought to continue in the same hands and just as early as it can possibly be begun.

Mr. Enoch: So far as the Western carriers are concerned our position is the same as Mr. Brown. We do

not care to have the Examiner do anything, so for as setting this case is concerned, by paying any particular attention to the fact that that case is now set for January 3rd.

Exam. Taylor: In other words, it would not inconvenience you if this was set for January 3rd?

Mr. Enoch: No, it would not.

Mr. Belnap: I have this to say, Mr. Examiner: We would much prefer to have you come back to Chicago to complete the heading. Now, if the Commission is unwilling to send an Examiner out to just complete the hearing in one case we are quite willing to go to Washington, except for this fact, that there are about five or six witnesses, they are not my witnesses, they are Mr. Macaulay's particularly, who I don't think can be taken to Washington because they are people who will come in to Chicago and in that event one way it could be worked out is to have, at a convenient time and place, the evidence of the local people down in the country taken simply by deposition.

[fol. 1116] Exam. Taylor: Well, that necessarily would have to be 10 days prior to any further hearing, according — the rules of practice.

Mr. Enoch: I don't understand that Mr. Macaulay——

Mr. Belnap: And Mr. Root, his additional witnesses will be at the further hearing.

Exam. Taylor: You will have to make the proper request for that.

Mr. Belnap: Well, that would depend, Mr. Examiner, you see on whether you were coming back here, in which case that would be unnecessary, as against whether the hearing might go to Washington, but Mr. Macaulay could advise the Chief Examiner immediately of his situation as to that so that could be taken into consideration when the Chief Examiner determines what to do with the case.

Exam. Taylor: Yes. Suppose you do that, Mr. Macaulay.

Mr. Macaulay: Advise the Chief Examiner as to what disposition I would like to be made?

Exam. Taylor: Whether you would like prompt action on the setting of the case, for continuing the case.

Mr. Macaulay: As far as we are concerned we want prompt action. We would much prefer, of course, to come here before you.

Exam. Taylor: If it is not set here what we want you

to do, if you see proper, is to take up with the Chief [fol. 1117] Examiner the prompt disposition of the case so that you could make a request that depositions be taken from witnesses who could not come to Washington.

Mr. Macaulay: I see.

Mr. Glover: Mr. Examiner, I happen to represent the W. J. Small Company at Fairfax in the Kansas City, Kansas district. They are interested in the rates on the barge line from Kansas City to Peoria, St. Louis and Chicago and the tariffs under protest or under suspension which make provision for the continued application of the proportional rates east of those points on the traffic via the barge line from Kansas City.

Exam. Taylor: Where they are published and fied with the Interstate Commerce Commission?

Mr. Glover: Yes, where they are published and filed with the Interstate Commerce Commission.

Exam. Taylor: Yes.

Mr. Glover: Now, from what I can see from what has been said so far there has been no testimony offered in connection with those rates. I don't know whether protestants intend to put anything in regarding them or not. I don't know whether they would care to say.

Exam. Taylor: Mr. Oliphant hasn't put his testimony on yet.

Mr. Glover: I understand that.

Exam. Taylor: And I imagine that was what you were waiting for to see what your position would be.

[fols. 1118-1119] Mr. Glover: That is right.

Exam. Taylor: So that you are in a position that you don't know where you are.

Mr. Glover: I don't know whether I should come back or not, Mr. Examiner. I don't know whether Mr. Oliphant wishes to say anything or not.

Exam. Taylor: Mr. Oliphant, unfortunately, could not be here. He had to catch a train.

Mr. Glover: Well, I will just let the matter stand then, Mr. Examiner.

Exam. Taylor: All right. Gentlemen, the case will stand adjourned to such time as the Commission may fix for further hearing.

(Whereupon, at 5:35 o'clock p. m., the hearing was adjourned.)

[fols. 1120-1121] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. I. & S. 4718

GRAIN PROPORTIONALS, EX-BARGE TO OFFICIAL TERRITORY

Morrison Hotel,
Chicago, Illinois,
January 17, 1940.

Met, pursuant to notice, at 10 o'clock A. M.

Before R. G. Taylor, Examiner

APPEARANCES:

As heretofore noted, and the following additional:

Charles D. Miller, 135 South La Salle Street, Chicago, Illinois, appearing for American Maize Company.

[fol. 1122] PROCEEDINGS

Exam. Taylor: Come to order, please, gentlemen. The Interstate Commerce Commission has set for further hearing at this time and place Investigation & Suspension Docket No. 4718, Grain Proportionals Ex-Barge To Official Territory. Are there any further appearances to be entered at this time? The reporter has been handed a written appearance of Mr. Miller. Mr. Miller, do you wish to make an oral appearance at this time?

Mr. Garrison: I filed the appearance. Mr. Miller will be here later, but he wanted me to enter his appearance. He will be up a little later.

Exam. Taylor: Are there any additional appearances to be entered at this time? (No response.) Mr. Brown, I believe you have something you wish to put on this morning?

Mr. Brown: If you please. Mr. Benson has an exhibit, partly new and partly substitute for exhibit 19. He will explain it.

S. H. BENSON was recalled, having been previously sworn, and testified further as follows:

By Exam. Taylor:

Q. Mr. Benson, you were previously sworn in this case?
A. Yes.

Exam. Taylor: Proceed.
The Witness: May I proceed?
[fol. 1123] Exam. Taylor: Proceed, Mr. Brown.

Direct examination.

By Mr. Brown:

Q. Go ahead, Mr. Benson, and present this exhibit.
A. I desire to withdraw sheets 9 to 15 inclusive, of my exhibit 19. Therefore, all reference thereto in the record should be disregarded.

By Mr. Enoch:

Q. What was that number, please?
A. 9 to 15.

Mr. Brown: 9 to 15.
Mr. Enoch: All right.

The Witness: These sheets 9 to 15 inclusive, show the receipts of grain at Chicago for the first ten months in 1938 and 1939, and it is our purpose to rely on the statistics of the receipts of grain at Chicago for the calendar years 1932 to 1939, inclusive, as printed in the annual reports of the Board of Trade of the City of Chicago. Therefore, as far as exhibit 19 is concerned, we desire to confine it to sheets 1 to 8, inclusive. I desire to present an additional exhibit containing the following statistics:—

Exam. Taylor: That will be known as exhibit 38.

(Exhibit No. 38 marked for identification.)

By Mr. Brown:

Q. Proceed, Mr. Benson.
A. On sheet 1 are shown the receipts of all grains at Chicago via all routes for the entire year of 1939. Sheet 2 is a comparison of the receipts of corn at Chicago via [fol. 1124] the various routes for the years 1932 to 1939, inclusive, along with the production of corn in Illinois for the years 1931 to 1938, inclusive. The information shown on this sheet 2 is that shown on sheet 8 of exhibit 19, except that as to 1939 the statistics are for the entire year instead of for the first ten months. Sheet 3 is a comparison of the receipts of corn at Chicago via the various

routes for the years 1938 and 1939, there being shown the percentage via each route of the total receipts for each of those years.

In 1939 the receipts of corn via the Illinois Waterway amounted to 15.72 per cent of the total receipts of corn for that year, while in 1938 they were 7.54 per cent of the total corn receipts for that year. Likewise, the receipts of corn by truck were greater in 1939 than in 1938, both in volume and in the ratio of percentage of the total receipts. In 1938 the amount of corn trucked in was 1.94 per cent of the total receipts of corn; whereas in 1939 the trucked in corn was 5.96 per cent of the total corn receipts.

With three slight exceptions, the percentage of the receipts of corn via the various railroads compared with the total corn receipts was less in 1939 than in 1938. The total receipts of corn via rail in 1939 amounted to 53.53 per cent of the total receipts of corn for 1938, but the total corn receipts via all the routes in 1939 were 61.87 per cent of the total corn receipts for 1938. This increase in 1939 over 1938 of the total receipts of corn is accounted for by [fol. 1125] the heavier receipts in 1939 by barge via the Illinois Waterway and by truck. On sheets 4 to 7 inclusive of this exhibit No. 38 are shown the shipments of all grains from Chicago via all routes for the years 1932 to 1939, inclusive, as shown in the printed annual reports of the Chicago Board of Trade. These statistics on sheets 4 to 7 inclusive are being furnished at the request of Mr. Belnap.

Exam. Taylor: Is that all?

The Witness: Yes.

Exam. Taylor: Are there any questions?

Mr. Brown: I offer him for cross-examination.

Exam. Taylor: Are there any questions by counsel for the railroads?

Mr. Day: I have no questions.

Exam. Taylor: Mr. Belnap, have you any cross-examination?

Mr. Belnap: I would like to inquire, Mr. Examiner, as to the present status of pages 9 to 12 of exhibit 19. They have been offered and received in evidence. There has been no subsquent ruling. I am perfectly willing to have them considered as no longer in evidence, but it seems

to me it takes an agreement or ruling to have them withdrawn or removed from the record.

Mr. Day: The witness said he was withdrawing sheets 9 to 15.

Mr. Belnap: I said, 9 to 15.

Mr. Day: You said, 9 to 12.

[fol. 1126] Mr. Belnap: I beg your pardon. 9 to 15, of exhibit No. 19.

By Exam. Taylor:

Q. Mr. Benson, does exhibit No. 38 show the information previously contained in exhibit 19, pages 9 to 15 brought up to date with additional information?

A. It does, with this one exception, that certain of the sheets, 12 to 15 inclusive, segregate the information according to the deliveries at the elevators and only for the first ten months of 1938 and 1939. What we are doing now is to put into the record the statistics as shown in our printed annual Board of Trade reports for entire years.

Exam. Taylor: Is that clear, Mr. Belnap?

Mr. Belnap: No, it is not, Mr. Examiner. I still think we have to have some ruling or stipulation in the record in order to be sure that we know the status of these pages that the witness says he is willing to withdraw.

Actually, he is taking some data completely out of the record, which is entirely all right with me, but Mr. Brown has explained, as I understand it, that they want to take the figures out because they cannot reconcile them with the annual reports. Is that correct, Mr. Brown?

Mr. Brown: That is right.

Mr. Belnap: As far as that is concerned, I am perfectly willing to have them go out.

Exam. Taylor: Are the parties willing to make that stipu-

[fol. 1127] lation? Is there any objection to it?

Mr. Macaulay: Mr. Examiner.

Exam. Taylor: Mr. Macaulay.

Mr. Macaulay: I find there is no information in the new exhibit pertaining to the amount of wheat, oats, rye, barley and soy beans arriving at Chicago during 1938. Apparently that is eliminated in the new exhibit, and if those figures are from proper sources, it seems to me that those

pages should remain in the exhibit for whatever they are worth.

Mr. Brown: Sheets 1 to 8 of the original exhibit No. 19 stand in the record.

Mr. Macaulay: That is right. On sheet 9 there is information which is not contained in your new exhibit.

Mr. Brown: You will find a substitute for it, I am quite sure.

Mr. Macaulay: Will you point out, Mr. Benson——

Mr. Brown: We show on the first sheet of exhibit 38 complete information for the year 1938.

Mr. Macaulay: 1939, it says in mine.

Mr. Brown: You will find that in the other exhibit. We did give complete information for that year.

The Witness: On sheet 7 of exhibit 19.

By Mr. Belnap:

Q. What pages do you want to withdraw? What is the first page you want to withdraw from exhibit No. 19?

A. Sheet 9.

[fol. 1128] Q. Sheet 9 covers——

A. Sheet 9 covers the first ten months of 1938. Sheet 7 of that exhibit gives statistics for the entire year.

By Mr. Day:

Q. You mean, sheet 7 of 38?

A. No. Sheet 7 of exhibit 19, the original exhibit.

By Mr. Belnap:

Q. Am I to understand that sheet 9 is really a repetition of sheet 7, except that it contains the entire year 1938?

A. That is substantially true, yes.

Q. In what way is it not true?

A. There is some difficulty in reconciling the figures. There is an overlapping, and one thing and another.

Mr. Macaulay: What I have in mind is this:

By Mr. Macaulay:

Q. Sheet 7 is the compilation of the figures arriving during the year 1938?

A. That is true, yes, sir.

Q. Then really what you are doing is taking out sheet 9, because it is a duplication of 7 and eliminating page 10, because it is brought up to date in the new exhibit?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Then you are eliminating the sheets with reference to the place where the grain was delivered to the elevators it went to?

A. That is the only real change.

[fol. 1129] Q. That is the only real change?

A. Yes.

Mr. Macaulay: If that is the only real change, I have no objection.

Exam. Taylor: No objection?

Mr. Day: That makes it unanimous.

Exam. Taylor: If there is no objection, the pages mentioned will be withdrawn, inasmuch as these pages will be shown in exhibit No. 38. Exhibit No. 38 will be received in evidence.

(Exhibit No. 38, Witness Benson, received in evidence.)

Exam. Taylor: Are there any further questions?

Mr. Belnap: Yes.

Cross-examination.

By Mr. Belnap:

Q. Mr. Benson, in your opinion has the transportation of grain via barge on the Illinois waterways increased the volume of the annual receipts at Chicago against what they would have been if barge transportation had not taken place?

Mr. Brown: I object. He has no means of knowing that.

Exam. Taylor: Is it not true that that can be ascertained in this exhibit?

Mr. Brown: I think so.

Exam. Taylor: Sir?

Mr. Brown: He wants him to do a little speculating. He wants him—he asked him if the total receipts were not increased by reason of the Illinois waterways.

[fol. 1130] Exam. Taylor: That is shown on this exhibit.

Mr. Brown: He cannot go beyond that, because he is

merely presenting what is shown in the annual report of the Chicago Board of Trade.

Exam. Taylor: He can testify from that. You can testify from your exhibit.

The Witness: As I understand it, the question of Mr. Belnap is, if there had been no barge movement at all and the Chicago market was dependent altogether upon the rails, whether receipts would have been just as much as they have been via barge?

Mr. Belnap: I am particularly interested in the opinion of this witness who presents the tonnage statistics for the Chicago Board of Trade, as I understand it, as to whether or not the barge movement has not been an influence in increasing the volume to Chicago.

The Witness: That must be a matter of speculation.

By Mr. Belnap:

Q. Have you any opinion about it?

A. I would say it is possible, perhaps probable, that the receipts were increased to some extent by the movement via barge.

Q. Is it in the interest of the Chicago Board of Trade to have an increased volume moved through its market?

A. It is, to some extent.

Q. That interest is served by the waterway movement, is it not?

A. Yes, to some extent.

[fol. 1131] Q. Does that benefit those located in your market in the merchandising or purchasing of grain, cash grain at the market?

A. To some extent.

Q. To what extent does it not?

Mr. Day: I object to this line of questioning. It seems to me it is going beyond the scope of the witness' direct examination. As I understand it, the witness is a rate, traffic and tariff man, who has simply tendered here figures taken from reports of the Chicago Board of Trade. He can be questioned as to the contents of the exhibit, which he offered, or even on his earlier exhibit; but it seems to me it is going beyond the scope of the direct to ask him about whether Chicago as a market is advantaged by river transportation. I do not think the witness is qualified to answer that.

Exam. Taylor: Read the question, please, Mr. Reporter.

(Question read.)

A. Well, when I say "to some extent"——

Mr. Day: Just a minute.
The Witness: Pardon me.
Mr. Day: There is an objection.
Exam. Taylor: He may answer if he knows.
Mr. Day: Exception.
Mr. Belnap: All right.
Mr. Brown: Mr. Benson, if you do not know to what extent, you ought to say so.
[fol. 1132] The Witness: When I say "to some extent", I naturally mean to the extent of the interest of some of the members of the Board of Trade. It is undeniable that some of the members of the Board of Trade are benefited by this barge movement. It follows that they are benefited to some extent.

By Mr. Belnap:

Q. That is, the people who deal in the grain, and buy it? Is that what you mean?
A. I refer to the members of the Board of Trade that receive this grain.
Q. The people who deal in the grain, buy the grain, members of the Chicago Board of Trade, are benefited by an increased volume through the market, are they not?
A. There is no doubt about that. They would not be in business if they did not.

By Mr. Day:

Q. Are you talking about people who float this grain on the river?
A. I am talking about the members of the Board of Trade receiving this grain. Naturally they are benefited to that extent.
Q. That is the river grain?
A. All I am saying is what is self-evident on the face of it.

By Mr. Belnap:

Q. That portion of your membership is benefited by anything which increases the volume through the Chicago market, is it not?

Mr. Enoch: I object to that. I object to any further inquiry of this witness along that line on the ground that it is [fol. 1133] an attempt to cast some reflection on the judgment and policy pursued by the Board of Trade in entering opposition here to what Mr. Belnap wants to do. I do not think the Commission is interested in whether the Board of Trade is exercising good judgment from its own selfish standpoint or not, in connection with this proceeding.

Mr. Belnap: I did not quite get the legal ground for the objection. The purpose, or the point I was trying to get at, Mr. Examiner——

Exam. Taylor: I think you are going too far into this question as to the Board of Trade.

Mr. Belnap: I was simply trying to inquire to what extent the rate situation which is now in effect is helpful to the Chicago Board of Trade, and then if there is something that does not help, I would like to find out about that. I should think that fact would be relevant in the proceeding, as to who is helped and who is hurt by the rate situation which is under review. You have ruled, so I will desist from further questioning along that line. However, I want to make my position clear.

Exam. Taylor: The ruling has been made. Proceed.

Mr. Belnap: I have no further questions if the objection to that line of testimony is sustained. That is all I want to ask about.

Exam. Taylor: Proceed.

Mr. Belnap: I have no further questions.

[fol. 1134] Exam. Taylor: Mr. Root?

Mr. Root: No questions, your Honor.

Exam Taylor: Mr. Macaulay?

Mr. Macaulay: No.

Exam. Taylor: Are there any further questions of this witness? (No response.) If not, you are excused.

(Witness excused.)

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: Call your first witness, Mr. Root.
Mr. Root: Mr. O. B. Robbins.
Exam. Taylor: Raise your right hand and be sworn.

O. B. Robbins, was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?
A. O. B. Robbins, Morris, Illinois.
Q. Mr. Robbins, just speak up loud enough so every one in the hearing room can hear you. In this big room it is hard to hear.
A. O. B. Robbins, Morris, Illinois.
Q. Mr. Robbins, have you prepared a statement to make—let me withdraw that. Will you state your business or occupation, Mr. Robbins.
A. I am manager of the Allied Grain Dealers Corporation of Morris.
[fol. 1135] Q. That is the Allied group which has been referred to so often in the testimony in this case?
A. Yes, sir.
Q. Have you prepared a statement which you would like to make for the record in this proceeding?
A. I have.
Q. Will you kindly make that statement.
A. I am manager of the Co-Operative Allied Grain Dealers Corporation of Morris, Illinois, and operate elevators on the north bank of the Illinois River at Morris, and Seneca, Illinois. Due to the fact that the Board of Trade Examiner in cross examination has alluded several times to the Co-Operative Allied Grain Dealers Corporation——

Mr. Day: Just a minute, please.
The Witness: Yes.
Mr. Day: I think the witness is confused. What Board of Trade Examiner are you talking about?
Mr. Root: The Chicago Board of Trade Examiner.
The Witness: The Chicago Board of Trade Examiner.
Mr. Day: Is that some examiner in this hearing?
Mr. Root: He is just trying to straighten out when this thing was organized. You will recall that Mr. Brown, and I think yourself, asked a lot of questions about Allied. He was just explaining——

Mr. Day: I did not know but what he meant the Commis-
[fol. 1136] sion Examiner.

The Witness: No.

Mr. Root: No.

Mr. Day: I want to be straight on the record.

The Witness: Mr. Brown, from the Board of Trade. Mr. Brown was the examiner.

By Mr. Day:

Q. Mr. Brown, sitting over here (indicating)?

A. Yes.

Q. He is the one you referred to as the Board of Trade Examiner?

A. That is right.

Mr. Day: I just wanted to get that straightened out on the record.

By Mr. Root:

Q. Proceed, please, Mr. Robbins.

A. I wish to state that this is a cooperative corporation organized March 8th, 1938, under the business Corporation Act in force July 13th, A. D., 1933. The company was organized and the stock subscribed by 21 cooperative and privately owned elevators within 30 miles of Morris. All the elevators within the Morris territory were solicited to participate in the ownership of the business and the opportunity is still open to any recognized grain dealer. We buy from any recognized grain dealer whether member or not. Our bids are the same to members and non-members and we buy from elevators only.

No high pressure salesmanship was used to induce anyone to become a member. Those who joined did so in order
[fol. 1137] to avail themselves of the cheaper transportation afforded by the Illinois waterway. The organization of the Co-Operative Allied Grain Dealers Corporation was made necessary by the spasmodic competition of truckers hauling corn direct from the farm to several large elevator concerns in Chicago. It was organized with an authorized capital stock of $50,000.00. The incorporators were G. E. Mellen, F. W. Finch, Chester A. Hunt, R. A. McClelland, Charles Treasure and O. B. Robbins. Lowell Hoit & Company or no other commission company has ever put one dollar in the organization.

Since starting in business June 1st, 1938, and up to December 1st, 1939, we have handled cooperatively for these 21 members and for some 27 other dealers, who wished to avail themselves of our facilities, 6,250,000 bushels of grain——

Mr. Enoch: Just a minute, please, Mr. Robbins.
The Witness: Yes.

By Mr. Enoch:

Q. Will you give me those dates again, please?
A. June 1, 1938, and December 1, 1939.
Q. To December 1, 1939?
A. Yes.

Mr. Enoch: All right.

By Mr. Root:

Q. Go ahead, Mr. Robbins. Give the bushels again.
A. 6,250,000 bushels of grain, mostly corn and beans. 88 per cent of the business done came from members and 12 [fol. 1138] per cent from non-members. All the profits of the business, except a small reserve fund and 7 per cent dividend paid on the stock was pro-rated back to the members in proportion to the business done, which enabled them to pay better prices to their farmer customers. The grain came to Morris only because the price was higher than could be paid for rail shipment.

Mr. Enoch: Mr. Root, have your witness read a little slower, please. It is difficult to follow when it is being read so rapidly.

Mr. Root: Yes. Read a little slower.

By Mr. Root:

Q. Proceed.
A. I wish to offer in evidence a copy of our by-laws and a list of the grain purchased and the station from which it came.

Mr. Root: Mr. Examiner, we have a set of several exhibits. Shall we number them off the record?
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Let the record show that exhibits Nos. 39 to 44 both inclusive have been identified.

(Exhibits Nos. 39 to 44 both inclusive, marked for identification.)

The Witness: Bids C. I. F. Chicago are given us by different commission merchants——

Mr. Root: Just a minute, now.

By Mr. Root:

Q. Copies of the by-laws are marked exhibit what, Mr. [fol. 1139] Robbins?

A. That is exhibit No. 39.

Q. Exhibit 39?

A. Yes.

Q. All right. Proceed.

A. Shall I proceed with this statement?

Q. And the stations from whence it came. That is, the map.

A. That is included on this map.

Q. That is exhibit No. 44?

A. That is right.

Q. All right. I think we are straight. Go ahead.

A. Bids C. I. F. Chicago are given to us by different commission merchants and terminal elevator operators each day as soon as the bid is posted. We deduct from this the cost of placing the corn in Chicago and the trimming charge. This deduction is 2.225 cents per bushel, broken up as follows: freight, 1.75 cents per bushel; trimming, .35 cents per bushel; and weighing inspection, .15 cents per bushel. We also deduct our handling cost and a small profit, and this then is a basis for our bid to our customers, as all our bids are F. O. B. Morris or Seneca.

The dealers in our territory get our bids by phone as soon as we can put them out after the market closes. If our bids are higher than the rail bids, trucking considered, they sell to us. If not they sell where they can get the most money for their farmer customers, all transportation con- [fol. 1140] sidered. When the dealer sells to us we mail him a confirmation of sale, stating the dealer's name and place of business, the kind and amount of grain sold, the grade, the price, the time of delivery, the discounts deduct-

ible in case the grain does not grade. A copy of confirmation of sale is offered in evidence.

Q. That is exhibit No. 40?

A. Exhibit No. 40.

Q. Proceed with your statement.

A. When the farmer from whom the corn is purchased by the dealer is ready to shell he notifies the dealer who acts as his agent in getting a sheller and the necessary trucks for handling the job. The corn is then trucked direct to the river elevator as 90 per cent of the grain we receive comes to us direct and does not pass through country elevator. This of course lessens the cost of handling as it only necessitates one elevation.

When the corn reaches our plant it is weighed over a 30-ton registering beam scale. A sample is taken from each load and tested for weight, moisture, damage, foreign material and color. After determining the grade a discount is established if the corn does not grade up to the grade purchased. An account sale is rendered to the country elevator each morning, each load is made up in detail showing the farmer from whose farm the grain came. The kind and grade of the grain, the amount, the number of the loads, the haulers name, the ticket number and the weight. A copy of account sale is offered in evidence.

[fol. 1141] Q. That is exhibit No. 41, Mr. Robbins?

A. That is 41, yes, sir.

Q. Proceed.

A. A check is rendered in full payment to each elevator delivering us grain each morning showing the amount and kind of each lot of grain, the contract upon which it is applied, the price and the total amount, both of bushels and money. A copy of our check is offered in evidence.

Q. That is exhibit No. 42, is that correct?

A. That is right.

Q. Go ahead.

A. I missed that ticket—exhibit No. 39, I believe it is.

Q. No. We are coming to that.

A. Oh, yes.

Q. Just go ahead with your statement.

A. The dealer also receives a ticket for each load of grain showing the date received, the number of the ticket, the farm from which the grain came, the trucker's name and the weigher's name. Stamped on the ticket by the regis-

tering beam scale are the gross and tare weight of the load, so there can be no mistake in reading the scale beam and the farmer receives these tickets when he settles for his grain. One of these tickets is attached to my exhibit.

Q. That has been marked exhibit No. 43 for identification?

A. 43.

[fol. 1142] Q. Go ahead.

A. Due to the difficulty we experienced in securing barges the first year we were in business and in order to protect ourselves against a recurrence of this difficulty we organized a barge corporation November 15th, 1938, with a capital stock of $50,000. We purchased four Dravo barges having a capacity of 30,000 bushels each.

Mr. Enoch: Not so fast.

By Mr. Enoch:

Q. What was that last statement, please?

A. Due to the difficulty we experienced in securing barges the first year we were in business and in order to protect ourselves against a recurrence of this difficulty we organized a barge corporation November 15th, 1938, with a capital stock of $50,000. We purchased four Dravo barges having a capacity of 30,000 bushels each. When I say "we", I mean the barge company.

By Mr. Root:

Q. Proceed with your statement, please, Mr. Robbins.

A. As the grain is delivered to us it is either elevated into an elevator bin or run direct into a grain barge as circumstances permit. After the barge is loaded, the barge company who is pushing our barges is notified. A river straight bill of lading is made out and signed and the grain is ready to be on its way to market.

Mr. Day: Just a minute, right there.

[fol. 1143] By Mr. Day:

Q. You said you notify the barge company?

A. That is right.

Q. Who pushes your barge?

A. That is right.

Mr. Root: In order to straighten that out, let me ask you this:

By Mr. Root:

Q. Do you mean, the gentleman who furnished the tug for towage?
A. That is right.
Q. You refer to the Barge Corporation in that sense?
A. It is the barge company. It is a different barge company.
Q. A separate and distinct corporation?
A. Yes.

Mr. Day: May we be off the record?
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.
Mr. Day: Read that last statement again, please.

(The record was read.)

Mr. Day: Do I understand that he meant towing company, when he said barge company?
The Witness: No. I meant, barge company.

By Mr. Root:

Q. You distinguish that from the Allied Barge Corporation, of course, Mr. Robbins?
A. (No answer.)
[fol. 1144] Q. Is that correct?
A. It happens to be Mr. Mechling, A. L. Mechling Barge Company.
Q. For the purpose of the record, would you state whether or not the Allied Barge Corporation has any tugs or pusher boats?
A. No. The Allied Barge Corporation has no pushers.
Q. They have only barges?
A. They have only four barges.
Q. Proceed.
A. When the tug boat arrives to pick up the barge the captain or pilot signs the bill of lading and picks up one copy, leaving us two copies; one of these is retained for

our files and the other deposited in the bank with draft attached.

Exam. Taylor: Let me interrupt you right there.
The Witness: Yes.

By Exam. Taylor:

Q. You have not furnished a copy of the bill of lading?
A. No.

Exam. Taylor: Will one be furnished later on, Mr. Root? He just mentioned a bill of lading.

Mr. Root: Yes. I think we could furnish one before the hearing is over. We do not happen to have one here.

Exam. Taylor: Will you attempt to do that this afternoon or tomorrow morning?

Mr. Root: I think I can get it tomorrow. I do not think I can get it this afternoon.

[fol. 1145] Exam. Taylor: Very well. Proceed.

The Witness: Those asking to have the reshipping rate——

Mr. Enoch: May we ask by whom and to whom—by whom is the bill of lading issued, and to whom is it issued?

Mr. Root: May I say something?

Mr. Enoch: I will not interrupt you.

Mr. Root: He is almost through.

Mr. Enoch: All right.

Mr. Root: I think Mr. Robbins will be subject to cross examination anyway.

Mr. Enoch: I will withdraw it.

By Mr. Root:

Q. Continue with your statement, please, Mr. Robbins.

A. Those asking to have the reshipping rate on barge grain cancelled are contending that the grain dealers of Illinois are losing their business by reason of the trucks and river business. I wish to state that all 23 members of the Allied Grain Dealers Corporation who are using our facilities are handling just as much grain today as they have ever handled and our facilities are open to every grain dealer within economical hauling distance of Morris or Seneca.

I believe the cancellation of the reshipping rate on barge grain will cut the price we can pay for grain at certain

times of the year, as the price of grain is determined largely by the elasticity of the movement of the grain. [fol. 1146] Corn, after it reaches Chicago, is the same price whether it comes in by barge at 3 cents per hundred or whether it pays an inbound rate of 12 cents per hundred as all corn is sold F. O. B. Chicago. The only difference is that the farmer in the Illinois River Valley receives 2 cents to 2½ cents or more per bushel more for his corn than his less fortunate neighbor who is too far away to ship by water.

If the reshipping rate on barge grain is cancelled, I believe the difference on the Chicago market will be wider between the I. P. billing and the lake billing corn than might appear by the difference in rates.

Mr. Enoch: I do not think that is the right kind of testimony. If he has not got much more, I am not going to make any objection. How much more have you got?

Mr. Root: 10 lines.

The Witness: Just another paragraph.

Mr. Root: He is merely expressing an opinion.

By Mr. Root:

Q. Continue, Mr. Robbins.

A. In other words, I believe the barge shipper will be penalized because all barge and intrastate billing corn will either have to go out by lake or be sold locally and the supply of this corn being so much in excess of the local requirements it will be purchased at enough discount to compensate the buyer for holding the corn until the season of open lake navigation.

We as an organization will probably have to do one [fol. 1147] thing. We probably will have to either buy or lease a terminal elevator equipped for loading steamers so that we can hold our barge shipments through the winter until lake navigation opens.

Q. Mr. Robbins, in your statement you mentioned that the Co-Operative Allied Grain Dealers Corporation was organized under the Business Corporation Act in force July 13, A. D., 1933.

A. Yes.

Q. Is that the Illinois Business Act?

A. That is the Business Act of the state of Illinois, yes, sir.

Q. You mentioned in your statement that Lowell Hoit & Company or no other commission company has ever put one dollar in your organization.

A. Yes.

Q. Have they ever loaned you any money?

A. No, sir. They never have loaned us any money.

Q. Do they own any stock at all in it?

A. They own no stock in our organization, no, sir.

Q. Does any commission house or grain house have any connection whatsoever with the Allied group?

A. None whatever.

Q. Except the business of selling to each one as you see fit?

A. That is right.

Q. Mr. Robbins, in your statement you mentioned a trimming charge of .35 of a cent per bushel which is charged in Chicago on ex barge grain.

[fol. 1148] A. Yes.

Q. Will you explain what that trimming charge is?

A. Well, as I understand it, a trimming charge is the cost of unloading the barge. The cost of unloading box cars is never assessed to the shipper. The purchaser of the grain pays the cost. On unloading barges, due to the rules of the Board of Trade, the shipper must pay the unloading cost.

Q. When was that rule made, that the shipper must pay the trimming charge or unloading cost of barges?

A. I do not know.

Q. Recently, or not?

Mr. Enoch: He says he does not know.

By Mr. Root:

Q. Mr. Robbins, do you hold any position in the Allied Barge Corporation?

A. Yes, sir.

Q. What is that position?

A. I am president of the corporation.

Mr. Root: I believe that is all I have on direct, your Honor.

Exam. Taylor: Are there any other questions by protestants?

Mr. Macaulay: I have one question.

By Mr. Macaulay:

Q. Mr. Robbins, does your organization pay a commission on grain sold in Chicago?

A. Yes, sir.

Q. What is the rate of that commission?

[fol. 1149] A. One-half cent per bushel.

Q. Do you ever sell direct to a buyer of grain in Chicago?

A. Yes, sir.

Q. Do you pay a commission just the same?

A. Yes, sir.

Mr. Macaulay: That is all.

Exam. Taylor: You may cross examine, Mr. Enoch:

Cross-examination.

By Mr. Enoch:

Q. Mr. Robbins, I did not hear who was the party under consideration when your counsel asked you if that party or those parties had ever loaned you any money or had any direct or indirect financial interest in the organization which you represent. Was that the Continental Grain Company?

A. No. He asked me if Lowell Hoit & Company——

Q. Lowell Hoit & Company?

A. Yes.

Mr. Root: That was in answer to Mr. Brown's statement, I might say to you.

By Mr. Enoch:

Q. You are president of the Allied Barge Corporation?

A. Yes.

Q. Can you tell me the stockholders of that corporation?

A. Yes, sir.

Q. Please give them to me.

A. The Cooperative Allied Grain Dealers Corporation [fol. 1150] are one of the stockholders.

Q. How much stock do they own?

A. The Allied Grain Corporation——

Mr. Root: I submit, your Honor, it is not material, the percentage. We have no objection to telling who owns the

stock. I do not think it is material to go into the matter of dollars and cents.

Mr. Enoch: I think it might prove to be material.

Exam. Taylor: The witness may answer.

A. The Cooperative Allied Grain Corporation owns $3,500 worth of stock.

By Mr. Enoch:

Q. Who are the other stockholders?

A. Square Deal—Farmers Square Deal Grain Company of Morris owns $3,500 worth of stock.

Q. Yes.

A. W. H. Allen of Morris owns $4,000 worth of stock. Mrs. W. H. Allen owns $3,000 worth of stock. That is all the stock issued.

Exam. Taylor: Just a minute.

By Exam. Taylor:

Q. Give me the name of the Farmers Cooperative again.

A. Farmers Square Deal Grain Company of Morris, Illinois.

By Mr. Root:

Q. Is there treasury stock besides that that has now been retired and is owned by the corporation itself?

A. Not the barge corporation, no, sir.

Mr. Enoch: We did not get that question.

[fol. 1151] Exam. Taylor: Louder, please, Mr. Root.

Mr. Root: I just asked him if there had been—if there was any treasury stock, so-called treasury stock of the corporation which is its own stock, retired out of surplus, and the witness answered "No", as I understood him.

Exam Taylor: Proceed.

By Mr. Enoch:

Q. What are the assets of the Allied Barge Corporation?

Mr. Root: May I inquire what you mean by that? Do you mean physical assets, dollars and cents, or what?

Mr. Enoch: Let's start with the physical assets.

The Witness: They own four Dravo barges.

By Mr. Enoch:

Q. Have they any other operating equipment?
A. No, sir. That is their only physical asset.
Q. Do you have any barges under lease?
A. No, sir.
Q. Have you leased any of your barges to any other parties or corporations?
A. No, sir.
Q. Did the Allied Barge Corporation borrow any money from any grain shippers at any time during its existence, or from any government agency?

Mr. Root: May I have that question read?
Exam. Taylor: Read the question.

(Question read.)

[fol. 1152] A. No, sir, it did not.

By Mr. Enoch:

Q. In what business is the Allied Barge Corporation engaged?
A. It is in the business of——

Mr. Root: Do you want a copy of the charter?
The Witness: It is in the business of letting these barges out on contract.

By Mr. Enoch:

Q. Does it have any other business?
A. No, sir.
Q. You are incorporated to buy, sell and deal in all kinds of grain, seeds, fuel and so forth—you were so incorporated, were you not?
A. Yes, sir.

Mr. Root: Wait a minute. Who was incorporated, Allied Grain or Allied Barge?
Mr. Enoch: Allied Barge.
Mr. Root: Let us get it straight.
Mr. Enoch: Allied Barge Corporation.

By Mr. Enoch:

Q. Your answer to that was "Yes", was it, Mr. Robbins?
A. Yes.

Q. Up to date your only activity is the letting of these four barges you own out under contract?

A. That is right.

Q. Is that a written contract?

[fol. 1153] A. Yes, sir.

Q. To your knowledge has any grain ever been handled by any one of the Allied Barge Corporation's barges except the grain of the parent corporation—what is that?

Mr. Root: Allied Grain Corporation.

By Mr. Enoch (Continuing):

Q. —Allied Grain Dealers Corporation?

A. Yes. There has been some grain handled.

Q. By whom?

A. By Mr. Mechling, who does our towing. We sometimes trade barges with him.

Q. By and large, the grain that moves in these four barges that you let to Mr. Mechling under contract is the grain of Allied Cooperative Grain Dealers Association?

A. Yes, sir, almost entirely.

By Exam. Taylor:

Q. Do you lease them to anybody else but Mr. Mechling?

A. No, sir.

By Mr. Enoch:

Q. Is that a contract that provides that he may have these barges by the trip or by the week, or the year?

A. No.

Q. What is the nature of that contract?

A. With Mr. Mechling, you mean?

Q. Yes.

A. We have no written contract with Mr. Mechling in [fol. 1154] regard to letting him have barges. These barges were purchased for our own use and the only time he has had our barges was when it was more convenient for him to let us use one of his barges and we returned the favor later on by letting him use one of our barges.

Q. You want to keep your barges in use all the time?

A. We intend to, but that happened to be a case where we needed a barge, and he had an empty, but we did not.

Q. Do you not keep your barges in use?

A. Yes.

Q. All the time?

A. As much as we can, yes.

Q. What compensation does Mr. Mechling pay the Allied Barge Corporation for the use of these barges?

A. He does not pay any compensation.

Q. Well, is that because the use of those barges is taken into account when you agree with him on the price you will pay him for pushing these barges up the river or down the river?

A. No, sir. That is not taken into consideration. It is just simply a matter of a gentleman's agreement. We needed his barge, and in turn let him use one of our barges when he needed it, and we did not.

Q. I understand that your barges are in use most of the time?

A. They are, yes, sir.

Q. Most of the time they are filled with the grain of the [fol. 1155] Cooperative Allied Grain Dealers Association?

A. That is right.

Q. Now, you must contemplate the use of those barges at a profit to the Allied Barge Corporation?

A. Yes, sir.

Q. Now, is not, then, the use of these barges by Mechling in handling corn of the Allied, taken into account when you agree with Mr. Mechling on what you will pay him for towing the barges.

A. No, sir, it is not.

Q. What do you pay Mr. Mechling for towing your barges?

A. We pay Mr. Mechling one cent a bushel for towing our barges.

Q. Suppose you did not have any barges: how much would you have to pay?

A. We would have to rent his barges. We would have to rent barges from him.

Q. Mr. Mechling has barges?

A. Sure.

Q. What does he charge when he furnishes barges?

A. I do not know.

Q. It would be more than a cent a bushel, would it not?

A. Yes.

Q. Do you not think that the fact that you furnish the barge is taken into account when you get his services for a cent a bushel?

[fol. 1156] A. No, I do not think so.

Mr. Root: I could not hear that question. May we have it again?

Exam. Taylor: Read the question.

(Question read.)

The Witness: Let me modify that. We have a contract with Mr. Mechling to push our barges at one cent a bushel. You are asking whether we use his barges or not—is that what you mean?

Mr. Enoch: Perhaps I did not fully understand your arrangement. Maybe my question was confusing to you.

The Witness: Just to clarify that, I will say that the only time Mr. Mechling has used our barges is at a time when we did not need them.

By Exam. Taylor:

Q. You mean, Mr. Mechling has used your barges for what purpose?

A. For hauling grain.

Q. Whose grain?

A. Whosever he might need to haul.

By Mr. Enoch:

Q. You mean, other than the grain of Cooperative Allied Grain Dealers Corporation?

A. Yes.

Q. Is that correct?

A. Yes. The only time he has used our barges that way, he has returned barges in place of the barge used of ours. It was simply a trade-off.

[fol. 1157] Mr. Root: Mr. Enoch, may I ask one question?

Mr. Enoch: Yes.

Mr. Root: To get this straightened out.

By Mr. Root:

Q. Mr. Robbins, how often did you ever exchange barges with Mr. Mechling?

A. It is not often. Probably three or four times in the last year.

Q. In other words, it is a very unusual condition?

A. Very unusual.

Q. It would be one of his empty barges at your place, when your house is full of grain, and your barges are in Chicago or somewhere else, is that right?

A. That is right. That is the only time we use them.
Q. It is not usual or customary, that transaction?
A. No.

Mr. Enoch: I thought when you interrupted me you were going to ask the witness to make a statement. Now you are doing the testifying.

Mr. Root: We are wasting a lot of time over something that happens about three times a year. It does not go to prove anything.

Mr. Enoch: You brought it up, Mr. Root.

Mr. Root: We are perfectly willing to bring out the whole truth, but there is not any reason for taking a lot of time discussing an immaterial point.

[fol. 1158] Exam. Taylor: Proceed, Mr. Enoch.

By Mr. Enoch:

Q. Mr. Robbins, has the Allied Barge Corporation ever shipped any corn by water through any other medium than the arrangement you just described here?
A. No, sir.
Q. In your barges, as a rule, towed by Mr. Mechling?
A. Well, wait a minute.

Mr. Root: Now, wait just a minute. I object to that question.

The Witness: For 30 days they were towed by a different tower, by a different barge company.

By Mr. Enoch:

Q. When was that?
A. That was when we first started in business.
Q. How much was that per bushel?
A. That was the same price, one cent.
Q. How long did that last?
A. 30 days.
Q. Why did it change?
A. Well, our contract expired with the man we had.
Q. Did you have a monthly contract with them?
A. No. We were finishing up a contract with him.
Q. Over what period of time was that?
A. We had a year's contract with him.
Q. What towing company was that?
A. That was the Berry Barge Line.

[fol. 1159] Q. Are they operating on the Illinois River now?

A. I do not believe they are. They got a boat sunk down the river. I guess that is as near as they come, to operating. The only one they had is sunk. I suppose you would say not.

Q. When did you start using the Berry Barge Company?

A. November 1, 1938.

Q. You had a year's contract with them?

A. No, sir.

Q. I misunderstood you, then.

A. We had a contract with the Berry Barge Company to furnish us barges and do the towing, when we first started in the grain business. Then we bought these barges and in order to—we had to let him have 30 days' notice of expiration, so we simply cancelled his contract and gave him 30 days' towing on our barges.

Q. As I understand your contract with the Berry Barge Company, in your contract with the Berry Barge Company you leased barges from that company and then paid them so much per bushel for pushing the barges?

A. Well, he leased the barge and furnished the barge and the pusher, and we paid him so much a bushel.

Q. How much did you pay him for that?

A. 2 cents a bushel.

Q. How much?

A. 2 cents a bushel.

[fol. 1160] Q. Didn't you say you paid him a cent a bushel for towing?

A. Yes.

Q. So you paid him a cent a bushel for the use of the barge?

A. It was all in one contract.

Q. Then you thought it would be to your advantage to own your own barges and hire the towing of those barges?

A. Well, the fact of the matter is, he could not keep us supplied with barges. The barges he had were not economical barges to use. They were small and very hard to handle.

Q. Did you ever borrow money—or did Allied Barge Corporation have to borrow money?

A. No, sir.

Q. To buy these barges?

A. No, sir.

Q. Did you ever have to borrow any money from the Allied Grain Dealers Corporation?

A. No, sir.

Q. Are you in debt to that corporation now?

A. What do you mean? What are you talking about?

Q. The Allied Barge Corporation—is it in debt to the Allied Barge——

Mr. Day: Allied Grain.

By Mr. Enoch:

Q. —Continuing——Allied Grain Corporation?

A. No, it is not.

Q. Are these barges paid for?

[fol. 1161] A. Yes, sir.

Q. Are you an officer in the Allied Grain Corporation?

A. I am a manager. I am not an officer.

Q. Are you the active head?

A. Yes, sir.

Q. Who are the officers?

A. Mr. W. H. Allen is president. Mr. George E. Mellen is vice-president. Mr. R. A. McClelland is secretary. Mr. John Shumaker is treasurer.

Q. Who are the stockholders in Allied Grain Corporation?

A. I cannot tell you offhand. There are 23 of them.

Q. 23 of them?

A. Yes.

Q. You may have covered this on your direct, but that statement was read rather speedily.

A. I can tell you who they are, if you want to take the time.

Mr. Enoch: No. Tell me this:

By Mr. Enoch:

Q. Do you have any stock in Allied Grain Dealers Association—what is the name of that?

A. No, sir.

Mr. Day: Allied Grain Dealers Corporation.

Mr. Enoch: Allied Grain Dealers Corporation?

The Witness: No. I have no stock in it.

By Mr. Enoch:

Q. Are any of the officers of the Allied Barge Corporation stockholders in the Allied Grain Dealers Corporation?
[fol. 1162] A. Yes, sir.
Q. Who are they?
A. Mr. Allen.
Q. Any others?
A. No, sir.
Q. Are these 23 members that you heretofore mentioned all stockholders in the Allied Grain Dealers Corporation?
A. Yes, sir.
Q. They all have the same amount of stock?
A. No.
Q. Who are some of the larger stockholders?
A. Well, let's see. Mr. McClelland. Mr. Mellen. The Farmers' elevator at Dwight. Square Deal elevator at Morris. That is the Farmers' Square Deal elevator.
Q. How many shares of stock has the Farmers' Square Deal Corporation in the Allied Grain Dealers Corporation?
A. I think they have 70 shares.
Q. What is the total capitalization?
A. 50,000.
Q. Mr. Allen is an officer of the Farmers' Square Deal Grain Company?
A. No. He is not an officer.
Q. Who is president?
A. You had better ask him about that.
Q. All right.
[fol. 1163] A. Mr. Hunt is president.

By Exam. Taylor:

Q. Is Mr. Allen a stockholder in Square Deal?
A. I do not know.
Q. You do not know?
A. I do not know.

Mr. Root: He will testify, your Honor; they will have a witness whom they can ask all the questions they want.

By Mr. Enoch:

Q. In describing the operations in connection with transportation, you said the barge company, some barge company makes out a river straight bill of lading.

A. No. I do not believe I said that.

Q. I understood you to say that a river straight bill of lading is made out and signed.

A. That is right. I did say that, but I did not say the barge company made out the bill of lading.

Q. Who issues the bill of lading?

A. I make it out.

Q. What is that?

A. I make out the bill of lading.

Q. In what capacity?

A. As manager of the Cooperative Allied Grain Dealers.

Q. To whom do you issue that bill of lading?

A. It is the A. L. Mechling bill of lading.

Q. Now do you not mean that you fill out the bill of lading and turn it over for Mr. Mechling to sign, and really it [fol. 1164] is Mr. Mechling's bill of lading which he issues to you? Is that not about the way that works out?

A. It is just a question of whether it is or not. It is the same as a railroad bill of lading. If I sign one of those, I suppose it is still a railroad bill of lading.

Mr. Enoch: Mr. Root, are we going to have a copy of one of those?

Mr. Root: Yes. As a matter of fact, it is Mechling's bill of lading.

The Witness: Yes. It is his bill of lading.

Mr. Root: Mr. Robbins makes them out, as he says, and either the captain or pilot signs them on behalf of Mechling Barge Corporation.

By Exam. Taylor:

Q. With respect to that grain you are talking about under that bill of lading, that is transported in your own barge, pushed to Chicago or some other point by Mechling?

A. That is right—you say, our own barge. It is a barge owned by the Allied Barge Corporation.

Exam. Taylor: Yes.

By Mr. Enoch:

Q. Does the Cooperative Allied Grain Dealers Corporation own any elevators at Morris and Seneca?

A. No, sir.

Q. Do they have any under lease?

A. Yes, sir.

[fol. 1165] Q. What are the assets of the Cooperative Allied Grain Dealers Corporation?

A. The assets are all cash, except a piece of property we bought, where we expect to build an elevator.

Q. Where is that?

A. In Morris.

Q. What elevators are those that are under lease at Seneca and Morris?

A. The former Farmers National Elevator, now owned by the Farm Credit Administration is under lease to us.

By Exam. Taylor:

Q. When you say "to us", you mean, the Allied Grain Corporation?

A. That is right.

Exam. Taylor; Proceed.

The Witness: At Seneca there is an elevator built by the Continental Grain Corporation that is under lease to us.

By Mr. Enoch:

Q. What are the terms of that lease at Seneca?

Mr. Root: Your Honor, I object to this. It is not material, what all of the terms of the lease are. He said he has leased it and he is operating it. I think we are going pretty far afield here.

Mr. Enoch: That is eminently a proper question here.

Exam. Taylor: The witness may answer, if he knows.

The Witness: The lease is rather long. I cannot quote it.

By Mr. Enoch:

Q. Does it provide for a yearly rental?

[fol. 1166] A. Yes. We pay a half cent a bushel for the grain that goes through it.

Q. Half a cent a bushel?

A. Yes.

Q. Is there any other stipulation or provision in there in respect to compensation for the use of that elevator?

A. Compensation to whom?

Q. To the owner of the elevator.

A. No.

Q. For its use.

A. No.

Q. What is involved—what makes this contract so long, then?

A. It is quite a lengthy contract.

Q. When all you say that it provides for is a half cent a bushel.

A. It has a lot of "wherefores", "whyfores" and so forth. It is drawn up by lawyers. You know how they fix them up.

Q. You interest me. I would like to see it. Have you a copy of it?

A. No, I have not.

Exam. Taylor: Now, Mr. Enoch, are you talking about the contract between the Allied Grain Corporation and the owner of the elevator?

Mr. Enoch: Continental Grain Company.

Exam. Taylor: Continental Grain Company?

[fol. 1167] Mr. Enoch: Yes.

Mr. Root: I think it would straighten the record out, Mr. Enoch, if you call that a lease. It is not a contract. It is a lease.

Mr. Enoch: Have you a copy of that, Mr. Root?

Mr. Root: No, I have not.

Mr. Enoch: Would you be willing to let us see a copy of that?

Mr. Root: I do not see that there is any materiality in that.

Mr. Belnap: I would like to inquire what is the materiality. I happen to represent the Continental Grain Company. It does not seem to me that the arrangement under which that company leases an elevator to somebody to operate has anything to do with the lawfulness of the cancelling of the proportionals on ex barge grain into Chicago. It is absolutely irrelevant, as I view it.

Exam. Taylor: Are you making an objection?

Mr. Belnap: Yes.

Mr. Enoch: I think that really goes to an issue here, because here is the Continental Grain Company, one of these shippers, and the Commission in this case with these issues before it ought to know what this arrangement is down here in all of its aspects at Morris, Illinois, in connection with the operation of that elevator, to see whether or not [fol. 1168] these tariffs are being complied with.

Mr. Belnap: What tariffs?

Mr. Enoch: Any tariffs that have to do with——

Exam. Taylor: That tariff, as I understand it, is here in issue.

Mr. Belnap: Yes, but Mr. Examiner, the terms of a lease arrangement for a building through which grain is handled has nothing to do with a tariff, a railroad tariff for freight rates, unless I am sadly mistaken. I may misunderstand your view of it, Mr. Examiner, and Mr. Enoch's view. I do not understand how it can possibly be considered relevant.

Exam. Taylor: That is something in Mr. Enoch's mind that he is trying to bring out. I am going to overrule your objection. Mr. Enoch may proceed, if he sees fit, along this line.

Mr. Root: Mr. Examiner, may we request the Rock Island Railroad and all of these other railroads to bring in the contracts they have with all the grain dealers along their roads?

Exam. Taylor: If they are in issue, if there is any possibility of their being in issue, I will permit it, yes, sir.

Mr. Root: It is an admitted fact that most of the elevators in the country are leased from railroads.

Exam. Taylor: Proceed.

Mr. Enoch: Most of the operators would be glad to turn them over to the Allied Grain Dealers Corporation, too.

Exam. Taylor: Proceed.

[fol. 1169] Mr. Enoch: What about that? Will you furnish a copy of that contract for us, or that lease?

Mr. Root: If the Examiner so rules, that we must, yes.

Mr. Enoch: All right.

Exam. Taylor: Do you wish that, Mr. Enoch? Do you still wish that lease?

Mr. Enoch: Yes. I would like to see it.

Exam. Taylor: Can you furnish that tomorrow?

Mr. Root: I do not know. We will have to go down to Morris and probably find it in a safety deposit box and have copies made of it.

Exam. Taylor: If you cannot furnish it tomorrow, let us know and I will give you sufficient time in which to furnish it. Proceed.

Mr. Root: As a matter of fact, your Honor, what is down there is a contract of Allied Grain to purchase this house from Continental——

Exam. Taylor: Just a minute.
Mr. Root: Yes.
Exam. Taylor: Are you trying to testify?
Mr. Root: No, I am not. I thought I might explain it.
Exam. Taylor: If you want to talk about this we will go off the record.
Mr. Root: That is all right.
Exam. Taylor: Off the record.

[fol. 1170] (Discussion outside the record.)

Exam. Taylor: We will take a five-minute recess.

(A short recess was taken.)

Exam. Taylor: All right, gentlemen. Proceed, Mr. Enoch.

By Mr. Enoch:

Q. What is the capacity of the four barges of the Allied Barge Corporation?
A. They hold 30,000 bushels each of corn.

By Exam. Taylor:

Q. And the weight per bushel is approximately 56 pounds?
A. 56 pounds is standard, yes.

By Mr. Enoch:

Q. Were those new barges when they were acquired?
A. No, sir.
Q. What did you pay for them?
A. We paid $8,500.
Q. $8,500 each?
A. Yes.
Q. Where did you get the money to buy those barges?
A. We have a stock company. We bought them under a bailment lease. You were talking about this lease. I want to say with regard to this lease—I said there was a lease with the Continental. It is about the same kind of lease that the bailment on these barges is. We are paying for the elevator, so much per bushel. It is a lease or it is not a lease, as you see fit. But, when the cost of the elevator is paid in at so much per bushel, it is our elevator, so it might [fol. 1171] be a purchase. We still do not owe for it, be-

cause any time we want to quit, we quit. There is no obligation, no notes signed, or anything of that kind.

Q. You have been talking about this lease, the contract for the elevator?

A. Yes.

Q. Speaking of the lease or contract with the Continental Grain Company?

A. Yes.

Q. I am talking about this arrangement——

A. That was the same kind of arrangement.

Q. —under which you purchased the barges.

A. Yes.

Q. Are these barges paid for, then?

A. Yes.

Q. Well, how much money did the Allied Barge Company get through stock subscription?

A. $14,000.

Q. $14,000?

A. Yes.

Q. Where did the balance——

A. The barges paid for themselves in use.

Q. In the operation?

A. Yes, sir.

Q. So that you—that is, the Allied Barge Company now [fol. 1172] has title to the four barges?

A. Yes, sir.

Q. No other individual or corporation or group of individuals has any interest whatever in the title to any one of the barges?

A. No, sir, no interest whatever.

Q. When did you begin to use those barges?

A. We started to use them on November 1, 1938—just a minute. I think we did not get them all—I mean, I think it was December 1st. I would not be positive as to whether it was November or December.

Mr. Root: Go ahead and finish your statement about how many barges you bought at that time.

The Witness: We just bought three to start with. Then later on we bought another one. We found we needed another barge.

Mr. Enoch: That is all I have now, until I see this contract. We are going to see it; I understand Mr. Root has undertaken to furnish it.

Mr. Root: Which contract is that that you are speaking about?

Mr. Enoch: I am talking about the contract we had under consideration just prior to the adjournment here, the contract with the Continental Grain Company.

Mr. Root: There has been no ruling by the Examiner on that yet, that I have heard—by the Examiner.

[fol. 1173] Exam. Taylor: I understood you to say that you would try to furnish it tomorrow, if you could; and if you could not, I said we would give you a certain length of time to do so.

Mr. Root: It is apparent that I did not make myself clear. I said we would furnish it if the Examiner ruled we must.

Exam. Taylor: Do you still maintain you want that lease or contract or whatever it is?

Mr. Enoch: I would like to see it. I think it may have a bearing on the issues here.

Exam. Taylor: In other words, do you want to just look at it here, or do you want to incorporate it as an exhibit in this record?

Mr. Enoch: I perhaps am not entitled to see it, unless it goes into the record, so unless they are willing to show it to me, I think I will have to say to you that I think it ought to be made part of this record.

Exam Taylor: Mr. Root, are you willing to let Mr. Enoch see it before he makes a request to have it incorporated in the record?

Mr. Root: Yes. As one lawyer to another, I am willing to let him read it. But I am not willing that the matter become part of the record in this case, unless the Examiner rules it should.

Exam. Taylor: I am not going to rule on it until Mr. Enoch makes a specific request to do so.

[fol. 1174] Mr. Enoch: I will make the request now, that I think it is material in connection with the issues here and that it ought to be part of this record.

Exam. Taylor: Well, if you cannot furnish it by tomorrow, I will rule on when it shall be furnished and if it shall be furnished. Is that all you have?

Mr. Enoch: Yes.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Mr. Robbins, what did you pay for those barges?
A. $8,500 each.
Q. Each?
A. Yes.
Q. How many barges do you usualiy ship in a tow?
A. Well, they are not generally all our barges in a tow. He might have two of our barges and he might only have one, but he could have five or six barges in the tow.
Q. I mean, for your own grain, you usually have one or two?
A. One or two, yes, sir.
Q. Is that correct?
A. Sometimes three. We have had as high as three.
Q. Do you ship this grain regularly?
A. Yes.
Q. On certain days of the week, for instance?
A. No, sir. Whenever we have a barge load and I think it is time to ship it, we ship it.
[fol. 1175] Q. There might be weeks when you might not have any?
A. There has not been any such period.
Q. There has not been a week go by but what you have made some shipment?
A. I do not recall any week but what we have made some shipment.
Q. Perhaps sometimes two shipments?
A. Yes. Sometimes every day.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Proceed.

By Mr. Day:

Q. In this period of approximately a year and a half you have had 6,250,000 bushels, as I understand it?
A. That is right.
Q. Now, when you make up the bills of lading, what information do you show on them?
A. We show the date; the point of origin; the company who it might be going to; and if it is sold through a commission company, the commission company who might have charge of it.

Q. You say, the point of origin.

A. Yes.

Q. Would that mean Morris, Dwight or some country station?

A. It might be Morris and it might be Seneca.

Q. It is some river point?

A. Yes.

Q. In any case?

[fol. 1176] A. Yes.

Q. What else?

A. Location of the elevator where it is to be unloaded.

Q. The kind of grain?

A. The kind of grain, whether it is bulk or sacked. It is always bulk with us. We also show on there the weight. I think that is all.

Q. Do you show this one and three-quarters cent freight on it?

A. No.

Q. There is no freight shown at all?

A. No, sir.

Q. That freight is only shown on your return to your customer?

A. It is not shown on the return to the customer.

Q. You just lump the two and one-quarter cents deduction, do you?

A. I make my bid after that deduction has been made.

Q. So there is nothing shown on the so-called bill of lading for freight?

A. No, sir.

Q. Is the charge made by Mechling always the same?

Mr. Root: Read the question.

Exam. Taylor: Read the question, please, Mr. Reporter.

(Question read.)

A. You mean, for towing our barges?

Mr. Day: Yes.

[fol. 1177] The Witness: Yes, sir.

By Mr. Day:

Q. Whether it is one or two or four barges?

A. Yes.

Q. You would pay the same amount per bushel?

A. Always the same.

Exam. Taylor: Your answer would seem to indicate that there was some other charge in connection with it, with Mr. Mechling's charges.

By Exam. Taylor:

Q. Is there any other charge?
A. No, sir.
Q. There is not?
A. No, sir.

By Mr. Day:

Q. Do any of the Allied Barge employees accompany the barges on the trips to Chicago?
A. None.
Q. The only employees on that trip are Mechling's, are they?
A. Yes, sir.
Q. How many men ordinarily does he have on a tow?
A. His crews are different sizes, depending on—he has four boats. They are different size boats. The larger boats I understand have a couple of more men than the others. Generally he has seven or nine on the boat.
Q. Seven on the smaller?
A. Yes.
Q. And nine on the larger?
[fol. 1178] A. Generally, yes.
Q. He has one large boat, you say?
A. Two.
Q. Two large boats?
A. I do not know that that is always the case, but that is generally the case.
Q. What length of time ordinarily is consumed in getting a barge, one of your barges, from Morris or Seneca to Chicago?
A. Well, they will run into Chicago in 20 to 24 hours.
Q. That is, to the elevator in Chicago?
A. Yes.
Q. Those elevators are usually located at the south end of town, in South Chicago?
A. South Chicago, yes, sir.
Q. How long do they lay over here in Chicago for unloading or other purposes?

A. Well, it depends on how soon they get on to the marine leg, but after they get to the elevator, it is from six to eight hours to unload them.

Q. Then what do they do?

A. Mr. Mechling picks them up and brings them back, or Mechling Barge Line.

Q. They start right back, do they?

A. Yes.

Q. So that the crew, or some of the crew is on duty 24 [fol. 1179] hours continuously, are they?

A. Yes, sir.

Q. On the return trip does it take about the same length of time as it does now?

A. It takes just a little less.

Q. How much less?

A. About 18 hours.

Q. 18 instead of from 20 to 24?

A. Yes, sir. That time varies, of course, because of weather conditions and so forth.

Q. How many barges ordinarily does Mechling have in tow?

A. Well, you say "ordinarily". That is a little hard to tell. He comes in with one, and he comes in with six, but it is hard to tell what you mean by "ordinarily".

Q. Anywhere from one to six?

A. That is right, yes.

Q. Is that correct?

A. Yes.

Q. He has hauled just one barge?

A. Yes, he has.

Q. Where he does haul one, he makes no different charge than where he would have six in the tow?

A. The same charge.

Q. Now, you told us about the breakdown of this two and a quarter cent deduction that you made in fixing the price [fol. 1180] to your customers.

A. Yes.

Q. You also said you made a deduction for handling and profit.

A. Yes.

Q. What does that amount to?

A. Well, conditions alter that sometimes, you know.

Q. Well, what would it amount to under ordinary conditions?

A. Under ordinary conditions we deduct 3½ cents from our bid. That leaves us a cent and a half for handling and profit.

Mr. [redacted]: Is that three—pardon me.

By Mr. Day:

Q. At other times it might be higher?
A. It might be a little more than that.
Q. How much?
A. Never more than 4 cents.
Q. 3½ to 4?
A. Yes.
Q. Is any charge made by Mechling to return the empty barges to your plant?
A. No, sir. It is included—that is included in the towing charge up.
Q. With respect to these discounts on account of grading, how much would that range to?
A. That is pretty hard to answer. They vary according to the market. Sometimes there is a surplus of off-grade corn on the market, and your discounts are wider when that [fol. 1181] happens than they are if there are only a few cars of off-grade corn.
Q. It might be 10 cents or more per bushel?
A. No.
Q. It would not be that much?
A. No. It might be a half cent; it might be a cent.
Q. These elements of weight, moisture, foreign material and color would only affect it at the most to the extent of a half a cent a bushel?
A. I did not say "at the most".
Q. That is what I am trying to find out. What would be the range?
A. The range—as I say, it is pretty hard to tell what the range might be. Market conditions control that a lot.
Q. It might be up to the 10 cents I stated a while ago, might it not?
A. That would be very unusual.
Q. It would be unusual?
A. Very unusual.
Q. But something over 5 cents would be rather usual, would it?
A. No. That would be very unusual, also.

Mr. Day: Off the record.
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Proceed.

By Mr. Day:

Q. You referred to the spasmodic competition of the [fol. 1182] truckers. Do you regard the approximately four million bushels a year that Bacon is said to ship into Chicago by truck as spasmodic truck competition?

A. It is spasmodic for this reason: you will find in the country that these truckers are in the country buying corn on an up market, or when there is a good demand for corn. If the market happens to be a little slack, they are not there at all. You can't find them.

Q. You say that is your competition?

A. I said that was the competition when we organized Allied.

Q. Is it the competition today?

A. To some extent; not a lot.

Q. The rail competition is no longer a factor, is it?

A. Oh, there is some grain shipped by rail, yes.

Q. There is some, but there is not very much of it, is there?

A. Not a lot. You have that occasionally. There is not a lot out of there.

Mr. Brown: You are talking pretty softly.

Mr. Day: He says there is not a lot of it. I think that is all I have.

Mr. Enoch: May I ask one more question, Mr. Examiner?

Exam. Taylor: Yes.

By Mr. Enoch:

Q. When you make this contract on behalf of Allied Barge Corporation with Mr. Mechling, what is the name of the party with whom you make it?

[fol. 1183] A. Well, I may be mistaken here, but I am sure—fairly sure it is signed "A. L. Mechling Barge Line" by "A. L. Mechling".

Q. A. L. Mechling Barge Line is simply a trade name, is it not, for A. L. Mechling?

A. I do not know whether he is a corporation or not. I might say here that I said no one else hauled for us. Mr. Mechling did furnish us barges at different occasions when we were under contract with Mr. Barry. We were not able to get barges and we got other persons to haul for us and he furnished barges and hauled them.

At that time he was not under contract with us to push them. You could not get barges—sometimes we could get some from him, and sometimes from John I. Hay and other fellows like that. There was a fellow by the name of Robinson who furnished us some, two or three times.

Q. John I. Hay—did he ever tow any barges for you?

A. No, sir, only his own barges. I do not know; I suppose they were his. He furnished the barges, at least.

Mr. Root: Speak louder, please.

The Witness: Mr. Hay—the only times he towed barges for us were the times when we were on the spot and could not get barges. At that time he furnished his own barges and towed them. We had nothing to do with getting barges.

By Exam. Taylor:

Q. What did he charge for barges?

A. He charged at that time 2 cents a bushel.

[fol. 1184] By Mr. Enoch:

Q. That was the contract rate, was it not?

A. Well, I rather think it was. We never had any written contract with him.

Q. Did you ever do business with Lawrence Transportation Company?

A. No.

Q. Or Mr. Lawrence?

A. No.

Q. Meyers?

A. No, sir.

Q. Waterwide?

A. No, sir.

Q. Central Barge Company?

A. No, sir.

Q. I understood you to say that all of the prices you receive—when I say "you", I mean the Allied Dealers Corporation—are F. O. B. Chicago?

A. Yes.

Q. In the elevator?
A. Yes.

Mr. Enoch: That is all.
Exam. Taylor: Mr. Flansburg?
Mr. Flansburg: No cross examination.
Exam. Taylor: Do any other respondents have any cross examination? (No response.) Mr. Brown?
[fol. 1185] Mr. Brown: I have a few questions, Mr. Examiner.
Exam. Taylor: Proceed.

By Mr. Brown:

Q. Mr. Robbins, when you put out bids to your stockholders, who are your country elevator operators, do you know what amount of that bid they retain for their own service of having the grain delivered by the farmers to your elevator at Morris and Seneca?
A. I do not believe I quite get you, Mr. Brown.
Q. You put out a certain bid to your stockholders periodically, do you not?
A. Every day.
Q. Every day?
A. Yes.
Q. That bid is the same to all of them, is it?
A. Yes.
Q. That bid requires them to deliver grain to your elevator at Morris or Seneca?
A. That is right, yes.
Q. Is that correct?
A. Yes.
Q. The question was: do you know what amount of that bid they retain for their services, the country elevator?
A. I think that varies. I do not know what amount they retain.
Q. Do you think it varies because of distance, or for some other reason?
[fol. 1186] A. Competition.
Q. Competition?
A. Yes.
Q. Do you think distance has anything to do with it?
A. You mean, the hauling charge?
Q. Yes.
A. The hauling charge is, probably.

Q. If that is based on the length of haul from the farmer's place?

A. Yes.

Q. Now, you gave as total charges, I understand, that your company pays to the Mechling Company for towing and for other expenses from Morris and Seneca to Chicago, one and three quarters cents per bushel, I think you said, for freight; .35 of a cent perbushel for trimming; and .15 of a cent per bushel for weighing?

Exam. Taylor: Weighing inspection.

Mr. Brown: Yes.

By Mr. Brown:

Q. Do you ship any grain by rail?

A. I have shipped a few cars—just a minute. You said that the charge was made by Mr. Mechling. It is not.

Q. No. I said, the charges you pay——

A. Yes.

Q. —including what you pay to Mechling.

A. I understood you to say those were his charges.

[fol. 1187] Q. No.

A. No.

Q. The total charges figure up 2¼ cents a bushel?

A. Yes.

By Exam. Taylor:

Q. Those charges, those total charges are charged against the owner of the grain, are they not?

A. No, sir.

Mr. Day: He said he deducts it in making his price to the customer for those purposes.

By Exam. Taylor:

Q. Is that correct?

A. That is correct, yes.

Exam. Taylor: Well, that is a charge against the owner of the grain, or the originator of the grain.

Mr. Root: Allied has title to this grain, has it not?

The Witness: No—I beg your pardon, sir. Allied takes and makes the price on the grain——

Exam. Taylor: Allied Grain Corporation?

The Witness: Allied Grain Corporation makes the price on the grain delivered at Morris. Then, up to that time there is no charge on it. That is the price the man who sells it to me gets for the grain if it grades what he sold it at. There is no deduction from that.

Mr. Brown: My idea is to break down the total of 2¼ cents per bushel that his company has to pay out in some way or another, to get grain towed and the barges furnished, [fol. 1188] from his elevator to the destination.

Exam. Taylor: Proceed.

By Mr. Brown:

Q. When you ship by car, do you pay something in Chicago for weighing and inspection?

A. Yes.

Q. Would that about offset what you pay for weighing and inspection of barge grain?

A. It is approximately the same.

Q. About the same?

A. Yes.

Q. This .35 of a cent for trimming, that is for trimming the barge load up to the elevator leg at South Chicago, shoveling up to the leg?

A. I understand it is, yes.

Q. That brings us down to the 1¾ cents per bushel.

Exam. Taylor: Just a minute, Mr. Brown.

Mr. Brown: Yes.

Exam. Taylor: In order that it may be clear on the record, the leg you speak of is the section from the elevator down into the barge, is it not?

Mr. Brown: Yes.

Exam. Taylor: I just wanted it clear on the record.

Mr. Brown: It is the trimming up to the unloading leg of the elevator at South Chicago.

Exam. Taylor: Proceed.

[fol. 1189] By Mr. Brown:

Q. I understood you to say you paid Mechling for the mere towing charge, that is, for pushing the barges up, one cent per bushel?

A. That is right.

Q. That leaves three-quarters of a cent per bushel unaccounted for. What does that cover?

A. That goes to the barge company, Allied Barge.

Q. That goes to Allied Barge Company?

A. Yes.

Q. For the use of the barges?

A. That is right, yes.

Q. Then, when Mechling or somebody else supplies the barges, do you pay three-quarters of a cent per bushel for the use of the barge?

A. The charge is all in one. As I say, since we had this contract, Mr. Mechling has never had—we have never made any deal that way. The only time he hauled for us was before we got barges of our own, and at that time I think we paid two cents.

Q. That is, two cents exclusive of trimming and weighing?

A. Yes. That is just the freight, in other words, because he furnished his own barges.

Q. In other words, formerly what was 2 cents is now three quarters of a cent, but he does the towing with your barges?

A. That is right.

[fol. 1190] Q. Is it fair to state that three-quarters of a cent per bushel is for the use of your barges?

A. That is right.

Q. When these barges are detained any undue length of time, is there any detention charge?

A. We have never been able to collect any yet.

Q. Have you had detention?

A. Yes.

Q. That was borne by your barge company, if it was your barges?

A. Yes, sir.

Q. Now, did you ever use the Federal Barge Line at any time while you have operated the Morris elevator?

A. No. We never used the Federal Barge Line.

Q. Why?

A. They were too expensive.

Q. Do you mean, they charged too much?

A. They charged too much.

Q. Much higher than you are now paying?

A. I think their rate is 6 cents.

Q. From Morris to Chicago?

Exam. Taylor: That is the published rate?

The Witness: I think it is.

Mr. Day: Whose charge is that?

The Witness: Federal Barge Line's.

Mr. Brown: I may for the record state that 6½ cents per [fol. 1191] hundred pounds is the rate in the tariff.

Mr. Belnap: That is not a published rate, Mr. Examiner.

Exam. Taylor: Sir?

Mr. Belnap: That is not a published rate with the Commission. You used the words "published rate," in the sense of filing with the Commission, did you not?

Exam. Taylor: I want to know.

Mr. Belnap: I want to clear the record up.

Exam. Taylor: Clear it up. Here is your opportunity.

Mr. Belnap: There is no rate published from Morris, Illinois, to Chicago, with the Commission. It is put in a printed document, and that is published. I think that is the way you intended to ask the question, was it not?

Exam. Taylor: Is it published with the Illinois Commission?

Mr. Oliphant: Yes, Mr. Examiner.

Mr. Enoch: I would like to have that clear. What rate is published with the Illinois Commission?

Mr. Oliphant: The rate between Morris and Chicago.

Mr. Day: 6½ cents.

Mr. Oliphant: I do not recall whether that is the rate. Mr. Brown says that is in the tariff.

Mr. Brown: I checked the latest tariff. It is 6½.

Mr. Oliphant: Illinois Commerce Commission No. 45.

Exam. Taylor: Very well. You may proceed, Mr. Brown.

By Mr. Brown:

Q. Mr. Robbins, when you write out the billing instruc- [fol. 1192] tions in this bill of lading for the signature of Mr. Mechling's representative, what do you show on the bill of lading as the destination of these barges?

A. It depends on what elevator they are going to. If they are going to Morris, you see, Morris has two or three elevators. They show which elevator it is going to in South Chicago. If it was going to the Continental, it goes to the Rock Island elevator, South Chicago.

Q. That destination is always shown when Mechling hooks on to your barges?

A. Yes.

Q. And starts towing?

A. Yes.

Q. Now, you mentioned something about a half cent per bushel on consignment. Did you mean that on barge shipments?

A. May I have that question again?

Q. You said something about a half-cent per bushel commission on consignment.

A. No, I did not.

Q. You did not?

A. No.

Q. Well, I have it here, one-half cent per bushel at Chicago when on consignment.

A. I did not say anything about consignment.

Q. Do you consign any grain?

[fol. 1193] A. No, sir.

Q. Are the destinations of your shipments from the Morris elevator different from the destinations of the shipments from your Seneca elevator?

A. Some of them.

Q. Are they materially different?

A. No. I would not say they were materially different. What do you mean?

Q. I mean this: do most of the shipments from the Morris elevator go to certain destinations in South Chicago, certain designated places for unloading?

A. Wherever I might designate.

Q. Yes.

A. Yes.

Q. That is usually not the same designation for delivery as the shipments from Seneca?

A. They are about the same, yes.

Q. They are?

A. Yes.

Q. Intermingled?

A. Yes.

Q. Someone asked about Lowell Hoit & Company. You would not know, would you, in your official capacity, whether Lowell Hoit & Company had any financial relations with any of the stockholders of the Allied Grain Corporation?

[fol. 1194] A. I would not, no.

Q. Could you give the locations of the elevators of your constituent membership?

A. Yes, sir.

Q. Will you furnish that for the record?

A. I have furnished it.

Q. Oh.

A. It is in the map. It shows the locations.

Mr. Root: Exhibit 44. That shows both,—off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

Mr. Root: Take exhibit No. 44, Mr. Robbins, and give that information.

The Witness: Referring to exhibit No. 44, Morris is the first one. That is the Farmers' Square Deal of Morris. Mazon is the next member: Mazon Farmers Elevator. Verona is the next member: that is the Verona Farmers' Elevator. Dwight is the next member: that is the Dwight Farmers' Elevator and R. A. McClelland.

Mr. Root: You have two members in Dwight?

The Witness: Two members in Dwight.

Mr. Root: Go ahead.

The Witness: Reddick is the next member: that is the Reddick Farmers' Elevator. Emington is the next mem-[fol. 1195] ber: that is the Robinson Grain Company. Saunemin is the next member: Saunemin is the Saunemin Elevator Company. Coal City is the next member: that is John Bookwalter. Kinsman has a member. That is Dunn Brothers. Langham has a member. That is M. T. Welch. Lisbon Center has a member—the name is quite long. I think it is Farmers' Cooperative Grain, Lumber & Supply Company. I believe that is what it is,—of Lisbon Center.

Wilmington has a member. That is Mr. Luther, C. J. Luther, I believe his name is. Minooka has a member. That is the Minooka Grain Company—Minooka Grain & Supply Company, I believe it is. Newark has a member. That is the Newark Farmers' Elevator. Serena has a member. That is the Serena Farmers' Eelevator. Gardner: Charley Treasure.

Mr. Root: The first one there shows two.

The Witness: The Farmers' Elevator of Dwight have an elevator at Gardner also.

Mr. Root: Are they both members?

The Witness: Yes. I mentioned that before.

Mr. Root: There is one member that is not on here, the Yorkville Farmers' Elevator—there are two members that are not on here: Yorkville Farmers' Elevator and the Plainfield Elevator Company which are located at Yorkville and Plainfield, Illinois, respectively.

By Mr. Root:

Q. Is that correct?

A. Yes. Those are two different companies, and two [fol. 1196] different stations.

Mr. Root: All right.

The Witness: I think that is all, Mr. Brown.

By Mr. Brown:

Q. The balance shown there are not members?

A. I do not believe I missed anyone.

Q. How about Wing?

A. Wing is not a member.

Q. What?

A. Wing is not a member.

Q. What would you say is the greatest distant haul of grain furnished by these stockholders?

Mr. Root: May I have the question read? I did not hear it.

By Mr. Brown:

Q. What is the greatest distant haul of grain from any of these stockholders?

A. I think Saunemin is the furthest removed. That is 38 miles, I believe, to Saunemin. I am not positive, but it is right close to it.

Q. Do you also receive grain from non-members that is trucked as great a distance as 38 to 40 miles?

A. Yes.

Q. To your elevator?

A. Yes, sir.

Q. Do you designate the elevator to which it is to be delivered when you put out your bid?

[fol. 1197] A. No.

Q. It can be delivered to either Seneca or Morris?

A. Either elevator.

Q. At the option of the shipper?

A. Yes.

Q. Were you connected with the Morris elevator at the time it was operated by the Farmers National Grain Corporation?

A. No, sir.

Q. When you first began operating the elevator at Morris, was there any understanding of any sort as to the distance beyond which you would not bid, a distance from your elevator, say, of 15 miles?

A. No, sir.

Q. Never?

A. No.

Q. Did you ever hear of any such understanding?

A. No, sir.

Q. Was the elevator at Peytonville operated by Finnegan in operation before you people got ahold of the Morris elevator?

A. Yes.

Q. When did you take ahold of the Seneca elevator?

A. I think we started first in October of last year, 1939.

Q. You were the first operators of that elevator?

A. Yes, sir.

Q. Did I understand you to say that all of the grain that [fol. 1198] you ship from both Morris and Seneca to South Chicago is delivered sold F. O. B. destination?

A. Yes, sir.

Mr. Root: What was that question?

Mr. Brown: I asked if all of the grain shipped from Morris and Seneca to South Chicago is delivered sold F. O. B. destination.

The Witness: C. I. F.

By Mr. Brown:

Q. What connection do you have with the grain after it is delivered and you get your money for it?

A. I did not hear you.

Q. What connection do you have with the grain after it is delivered at destination, at South Chicago, and you receive your pay for it?

A. We do not have anything to do with it.
Q. No connection whatever after that?
A. No, sir.

Exam. Taylor: Are you talking about the barge line, now, or your grain company?
The Witness: The grain company, wasn't it?
Mr. Brown: Yes. The grain company.
The Witness: Yes.

By Mr. Brown:

Q. Are your stockholders prohibited from shipping by rail or by truck to Chicago?
A. No, sir.

[fol. 1199] Q. If they sell to a river elevator, are they obligated to sell to you?
A. No, sir.

Q. Is your bid the same to non-stockholders as to stockholders?
A. Yes, sir.

Q. This three-quarters of a cent per bushel difference between the towing and what I understand is the transportation cost—is that paid by the Allied Grain Dealers Corporation direct to the barge company after each transaction is finished?
A. No.

Q. How do you account for it?
A. It is taken out at Chicago, the same as your freight is taken out when your grain is unloaded and weighed. The towing and the barge charges both are taken out there.
Q. You mean, the charges are collected at Chicago?
A. Yes.

Q. On the out-turned weight?
A. Yes.

Mr. Enoch: I did not get what charge you are talking about.
Mr. Brown: The difference between the towing charge of 1 cent and the 1¾ cents that covers what I would call transportation.
The Witness: I understood you to say both the towing and the three-quarters of a cent charge.

[fol. 1200] By Mr. Brown:

Q. Let's take the one and three-quarters cents.
A. Yes.
Q. That is paid in one lump sum?
A. Yes.
Q. By the Chicago unloader, based on the out-turned weight?
A. Yes.
Q. He pays that to whom?
A. Allied Barge Company.
Q. Allied Barge Company?
A. Yes.
Q. Allied Barge Company retains three-quarters of a cent for its service, and one cent per bushel goes to Mechling?
A. That is right, except for the charge for trimming and weighing and inspection.
Q. Oh, yes.
A. That is not included in that.
Q. That is not included in the 1¾ cents.
A. No.

Mr. Brown: I am trying to break down the 1¾ cents.

By Mr. Brown:

Q. This three-quarters of a cent per bushel for use of the barge company's barges does not go through the hands of Allied Grain Dealers Corporation?
A. No, sir.
Q. It is paid direct?
A. Yes.
[fol. 1201] Q. I think you said you did not employ any barges other than your own, except when you made an interchange with Mr. Mechling, during periods when you did not have barges there, and so forth, is that correct?
A. That has been the case since we had our own barges. Prior to that we got barges wherever we could. We were in a terrible spot and we had to get them.
Q. Your business was so great you could not furnish them yourself and Mechling could not furnish them, so you went outside to get them?
A. We had a contract with the Barry Barge Line to furnish barges and do the towing. They could not furnish us

enough barges. They were too slow. The barges were very small. At that time we got barges wherever we could get them. Ordinarily—in fact, all the time, the barge included the towing. The man who owned the barge did not let us have it unless he towed the barge, too.

Q. How long has it been since the Barry Line went out of business?

A. I would not say they are out of business. Their boat sunk here about 20 days ago. I suppose they are out of business. I do not know.

Q. I would think they would be.

A. Yes.

Q. I thought it was some months ago.

[fol. 1202] A. No. 20 days ago.

Q. Let us go back to the period prior to 20 days ago when you had to hire outside barges that could not be furnished either by yourself or Mechling.

A. Yes.

Q. From whom did you obtain them?

A. Wherever we could get them.

Q. What did you pay for the use of them?

A. We had no written contract with anyone, you understand. It was a verbal agreement between whoever might be able to furnish barges, and invariably he insisted on pushing those barges when he furnished them. Those barges at that time were 2 cents a bushel.

Q. Then it so happened that there have been times in the recent past when there was towing done for your account by other than Mechling?

A. Yes.

Q. You paid for that, 2 cents a bushel?

A. The same thing before Mechling started, yes.

Q. You paid 2 cents a bushel since Mechling started, is what I want to get at.

A. No. We have not had anyone tow for us except Mechling, since he started.

Q. Since Mechling started towing for you, during any period when there was need for a barge, when he could not [fol. 1203] furnish barges and you yourself could not furnish them, did you get barges?

A. No, sir.

By Exam. Taylor:

Q. Have you railroad facilities at your elevator?

A. We have railroad facilities at Morris, but not at Seneca.

Q. When you could not get barges at Morris and you had railroad facilities, did you ship by rail?

A. We shipped 34 or 35 cars by rail there in August, 1938, during the rush time of corn.

Mr. Brown: Just one more question.

By Mr. Brown:

Q. I believe you compared the price that the farmers receive who deliver grain to your elevators at Morris and Seneca with what they would have received had the shipments gone by rail. Will not that vary a great deal?

A. Yes.

Q. According to the distance the farmer has to haul it to your elevator?

A. It varies some, yes.

Q. How much would you say, between 10 and 20 miles?

A. You mean, the hauling charge between 10 and 20 miles?

Q. The net return to the farmer.

A. It does not vary much in that distance.

Q. It does not vary much between 10 and 20?

A. No.

Q. Between 10 and 30, how much does it vary?

[fol. 1204] A. It varies some; not a lot, for this reason: the railroad rates at a point 30 miles distant are higher than they are at Morris.

Q. I see. 40 miles?

A. That more or less offsets the difference in the hauling.

Q. 40 miles away from the elevator the rail rate would still be a little high?

A. Yes.

Q. The gradation of the rail rates really shuts the fellow off from shipping by rail and throws him over to the barge on a common rate?

A. A farmer gets about the same whether he is 40 miles away, or whether he is not. Of course, there is a little as to where it is uneconomical to haul.

Mr. Brown: Mr. Robbins, I believe that is all. Thank you.

By Exam. Taylor:

Q. What is the greatest distance they would haul to the Seneca or Morris elevator?

A. I think about 45 miles is as far as we get grain.

Q. From Saunemin?

A. Saunemin is 44 miles, yes—no. Saunemin is 38 miles. Wing is 44 miles. We get quite a lot of grain from them.

Exam. Tayor: Is there any other cross-examination by counsel in support of the respondents? (No response.)

Mr. Day: I want to ask one more question, Mr. Examiner.

Exam. Taylor: Now, does this cross-examination bring up [fol. 1205] something new?

Mr. Day: No. This is supplemental to what Mr. Brown brought out.

Exam. Taylor: Mr. Day.

By Mr. Day:

Q. Mr. Robbins, with respect to this detention, you stated that you made no charge for detention?

A. Detention?

Q. To the owner. Does Mechling make a charge?

A. Detention?

Q. Yes.

A. I do not get it. What do you mean?

Q. The same detention you answered Mr. Brown about.

A. You mean, the charge?

Q. I am talking about the detention of the barge. You said there was such a thing. You answered Mr. Brown to the effect that you made no charge to your customer yourself for detention.

A. Well, I may be pretty dumb. I want to know what you mean by "detention". Do you mean the holding of the barge at the unloading point of something of that kind?

Mr. Day: Off the record.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record.

Mr. Day: He asked you if barges were sometimes detained and you said "Yes", that they were.

[fol. 1206] The Witness: Yes.

Mr. Day: Then Mr. Brown asked you "Do you make a charge to your customer where barges are detained", and you answered "No".

The Witness: Yes.

By Mr. Day:

Q. Having recalled that to your mind, will you state now whether the Mechling Barge outfit makes a charge against the grain where their barges are detained?

A. I do not know. You mean, where he uses his own barges?

Q. Yes.

A. I do not know whether he does or not. I would not be able to say.

Q. Well, are there occasions where his towing is detained on account of congestion at the elevator or obstructions to navigation or for some other reason?

A. Sometimes, yes, sir.

Q. In a case where the elevator is congested and he cannot set the barges in to unload the grain, would he make a charge?

A. No.

Q. Against the property at that time?

A. No, sir, no charge.

Q. He will stay there as long as is necessary?

A. Reasonably long. I do not think he would stay unreasonably long.

Q. The point is, he never has made a charge?

A. He never has made a charge, no, sir.

[fol. 1207] Q. How often do you make these settlements with Mechling?

A. Mechling gets paid after the unloading of every barge.

Q. By you?

A. No, sir. By the Allied Barge Company.

Q. I mean, by your company—by Allied Barge Company?

A. Yes, sir

Q. He is paid here in Chicago by the Allied Barge Company?

A. No, sir. His address is Joliet. We mail him a check in Joliet.

Q. You mail it from Morris or Seneca to Joliet after you hear that the barge has been unloaded here in Chicago?

A. The check is mailed from Morris to Joliet. The office of the barge corporation is in Morris and the check is mailed from the office of the Barge Corporation to Mr. Mechling at Joliet.

Q. How long after the barge is unloaded?

A. Just as soon as we get the returns on it.

Q. That necessitates your paying bills to Mechling, then, once a week or oftener?

A. Oh, yes.

Q. Depending on how many barge loads you send up here?

A. Yes.

Q. You do not let it run to monthly settlements?

A. No, sir.

Q. There is a settlement made after each load?

A. After each load—I will modify that. Sometimes [fol. 1208] we get returns on two or three barges at a time. In that case there would be two or three loads in one check.

Q. They are all in one tow?

A. All in one tow, yes.

Q. After each tow you make a settlement?

A. That is right.

Q. The return is an account sales that is sent to you from Chicago?

A. The return is sort of a freight bill, yes, sir.

Q. Who issues it?

A. You mean, for Mr. Mechling?

Q. No.

A. What do you mean?

Q. You said you pay Mr. Mechling after the grain is unloaded in Chicago.

A. Yes.

Q. After you get your returns from that grain. We want to know what you mean by "return".

A. I do not mean for the grain. I meant returns from the unloading of the barge which gives us the weight of the amount of grain that was in the barge. There is a freight bill issued.

Q. Who issues that?

A. Either the commission company or the elevator who unloads the barge, giving us the amount of grain.

Q. Do you have a copy of one of those returns with you?

[fol. 1209] A. No, I have not.

Mr. Day: I wonder if you would mind furnishing that for the record.

Mr. Belnap: I think one is in the record.

Mr. Root: Not of this particular kind.

Mr. Belnap: Yes.

Mr. Root: Wait a minute. At the previous hearing didn't we get those?

Exam. Taylor: They are here.

Mr. Root: We were talking about manifestos and one thing and another.

Mr. Day: I do not think it is in the record.

The Witness: I also think one of those bills of lading of Mr. Mechling is probably in the record.

Mr. Belnap: Exhibit No. 32, I think is a copy of the document you are talking about.

The Witness: This looks like one here (indicating). That looks like one.

Exam. Taylor: Just a minute.

The Witness: It is not to us.

Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: On the record. Will you state that on the record, please, Mr. Witness.

The Witness: That is not one of our——

[fol. 1210] Exam. Taylor: You are referring to exhibit No. 24?

Mr. Day: That is not one what?

The Witness: That is similar to the one we get. It is not one of ours, however.

Exam. Taylor: Exhibit No. 24 is——

The Witness: This happens to be Continental.

Mr. Root: Which exhibit do you have?

The Witness: 24.

Mr. Root: Look at 32. 32 is one of yours.

The Witness: Yes. That is one of ours.

By Mr. Day:

Q. Is that what you meant when you referred to a return?

A. Yes. That is what the barge company gets.

Q. It is on receipt of that so-called return typified by exhibit No. 32 that you make your payments to the barge company?

A. That is right. I do not make payments.

Q. Your company does?

A. Yes.

Q. Do not quibble. Your company does, or your barge company does.

A. Yes. That is right. That is one of the bills.

By Exam. Taylor:

Q. What is the purpose of the bill?

A. Well, that is simply a freight bill. This has a cent and three-quarter per bushel on corn, you notice, and a different price on oats.

[fol. 1211] Q. What is the price on oats?

A. 1.4 cents. Then the barge company, of course, deducts their three-quarters of a cent, or whatever it might be——

Mr. Belnap: Louder, please.

The Witness: —and they send Mr. Mechling a check for his one cent.

Mr. Belnap: May we have the reporter read that? I could not hear it.

Exam. Taylor: Read the answer, please.

(The record was read.)

By Mr. Day:

Q. This particular return, as you call it, showed in addition to a charge of 1¾ cents on beans, a charge of 1.4 cents on oats.

A. That is right.

Q. Is that the charge on oats?

A. That is right.

Q. What was the contemporaneous charge on corn?

A. The same as beans. There was no corn on the bill. That would be the price.

Mr. Day: I think that is all.
Exam. Taylor: Off the record.

(Discussion outside the record.)

Exam. Taylor: We will adjourn until 2 o'clock P. M.

(At 12:30 P. M., adjourned until 2 o'clock P. M.)

[fol. 1212] Afternoon Session

The hearing was resumed pursuant to recess.

2:00 P. M.

Exam. Taylor: All right. Come to order, gentlemen.

O. B. Robbins resumed the stand and testified further as follows:

Cross-examination (continued).

By Mr. Enoch:

Q. Mr. Robbins, prior to the noon recess you were talking about exhibit number 32 which purports to be the document surrendered to the eastbound carriers for the purpose of engaging the application of the outbound proportional rates from Chicago. Now, directing your attention merely to the physical making up of this document exhibit number 32, do you know where the typewriters are or the lead pencils that were used to make the notations on this document, the original of it?

A. I think it was in Mr. Lowell Hoyt's office. The document was made by an agent there of the Allied Barge Company.

Q. What agent was that?

A. Mr. Allen has an agent there to look after his freight business, in Mr. Hoyt's office.

Q. In Mr. Hoyt's office?

A. Yes.

Q. Is that the office of the Lowell Hoyt Company?

A. That is right.

[fol. 1213] Q. Now, at the bottom there is a notation "Paid 11/30/39, per W. H. Allen." Is that the W. H. Allen that is president of the Allied Grain Dealers Corporation?

A. Yes, sir.

Q. And was Mr. Allen's signature on the original, do you know?

A. I don't know. I imagine it was but I don't know.

Q. Well, now, would he put his signature on at Chicago or at Morris?

A. At Morris probably.

Q. Now, when you spoke of the——

Mr. Belnap: Why don't we clear that up right there, Mr. Enoch?

Mr. Enoch: Yes.

Mr. Belnap: Is Mr. Allen signing the bill as paid on behalf of the Grain Company or the Barge Corporation?

The Witness: He is signing this bill as paid on behalf of—this is made by the barge corporation and he is signing it as manager of the barge corporation.

By Mr. Enoch:

Q. Is Mr. Allen manager of the barge corporation?

A. Yes.

Q. And president of the Allied Grain Dealers Corporation?

A. Yes.

Q. Where is the signature attached,—at Morris, did you say?

A. I rather think so, although I wouldn't say; I don't know.

Q. Now, this is not the return to which you referred?

[fol. 1214] A. No. The grain company does not get this. This is the freight bill returned to the barge company.

Q. Now, is this on a regular form?

A. I think it is. Yes, I know it is.

Q. Is that the form that is made up by Lowell Hoyt & Company or if not by them by whom is it made up?

A. This is made up by the agent of the barge corporation.

By Mr. Belnap:

Q. Is it a printed form?

A. It is a printed form, yes.

Q. The agent just fills it in?

A. He just fills it in.

By Mr. Enoch:

Q. Does the Allied Barge Corporation file any annual reports with the Illinois Public Utilities Commission, do you know?

A. No, sir, I don't think they do.

Q. Has the Allied Barge Corporation ever sought or received from the Illinois Public Utilities Commission any certificates of convenience and necessity?

A. No, sir.

Q. Has the Allied Barge Corporation ever filed any rates for any kind of service performed by it with the Illinois Public Utilities Commission?

A. No, sir.

Q. The Allied Barge Corporation has never gone to the Illinois Public Utilities Commission for anything, has it?

[fol. 1215] A. No, sir.

Mr. Enoch: That is all I have.

Exam. Taylor: Has anybody any further cross examination?

By Exam. Taylor:

Q. Before redirect, Mr. Robbins, I take it that you understand the question before the Interstate Commerce Commission in this proceeding? That is to say, it is a question as to the cancellation of the use of the proportional rates eastbound out of Chicago or other points on ex-barge grain.

A. Yes, sir, I understand that.

Q. Now, I take it that you understand, then, that the availability of those ex-barge rates to the proportional rates in connection therewith is an advantage to you and your shippers?

A. We think it is, yes.

Q. Do you have anything to do with the surrendering of those bills, the one that was shown to you a moment ago, exhibit 32, surrendering them for the purpose of getting the availability of the proportional rates, with the inspection bureau, the bill that says or that you say is endorsed, "Transit Bureau" and has the number "392790?" Now, the purpose of that was so that the shipment would be properly policed through the transit bureau so that they could protect on the outbound movement the proportional rate.

A. Yes.

Q. Did you or your company, the barge company, have anything to do with the surrendering of the bills for that [fol. 1216] transit stamp on there?

A. Yes, they issued this bill or a copy of this bill, of which this is a copy. Is that what you mean?

Q. Who did?

A. The barge corporation.

Q. And they never surrendered it to the inspection bureau?

A. I don't know as to that. I imagine they did.

Mr. Belnap: Pardon me, I didn't get that answer.

The Witness: I don't know whether they did or not. I support they did but I don't know.

Mr. Belnap: You suppose who did?

The Witness: The barge corporation. I don't know anything about that. That is out of my jurisdiction.

By Exam. Taylor:

Q. So far as the Allied Grain Corporation,—was this the Allied Grain Corporation's grain when it arrived in Chicago?

A. Yes, sir.

Q. It belonged to you?

A. Yes, sir.

Q. I should imagine it would be your company, the grain company, that would surrender it for the inspection bureau stamp.

A. The grain company had nothing to do with the transportation of the grain. The barge company had the transportation of the grain.

Q. Well, do you have any agreement with the Eastern [fol. 1217] lines for the protection of joint through or proportional rates?

A. No, sir.

Q. Neither verbal, written or implied?

A. None that I know of.

Exam. Taylor: Redirect?

Mr. Day: I was a little bit late getting back. I wonder if I may ask a few questions?

Exam. Taylor: If that brings up any question, Mr. Day, proceed.

By Mr. Day:

Q. Just before we recessed, Mr. Robbins, you made the statement to me that Lowell Hoyt had issued the particular paper introduced here in evidence as exhibit 32.

A. Well, it was issued out of his office. There is an agent of the Allied Barge Company in Lowell Hoyt's office.

Q. Who pays him?

A. The Allied Barge Company.

Q. How much do they pay him?

A. That I don't know.

Q. Well, he is your agent, isn't he?

A. I am not manager of the barge corporation.

Exam. Taylor: Which barge company, now, are you talking of, Mr. Day?

Mr. Day: His own, as I understand it.

The Witness: The Allied Barge Corporation.

Q. You are president of the Allied Barge Corporation, [fol. 1218] aren't you?

A. Yes, that is right.

Q. You know how much you pay this man?

A. I think he is paid $250 a year.

Q. From the barge line?

A. I think so.

Q. What are his other duties in addition to issuing these papers?

A. Well, his duties are to sort of keep these barges in motion and let us know where they are, and so forth, and when they arrive into Chicago.

Q. In addition to what you pay him does he get compensation from Lowell Hoyt?

A. I think he does.

Q. Do you know how much?

A. No, I do not.

Mr. Day: That is all.

Exam. Taylor: Redirect?

Mr. Belnap: I would like to ask one question.

Redirect examination.

By Mr. Belnap:

Q. This receipted freight bill goes back to the man who purchased the grain from the Allied, does it not?

A. Yes, it does.

Q. Under that circumstances don't you know that whatever is done with that bill is done by the man to whom you [fol. 1219] sell the bill?

A. Yes, sir. It is, of course.

Mr. Brown: Mr. Belnap, you mean the man whom he sells the grain to.

Mr. Belnap: To whom the Allied sells the grain.

Exam. Taylor: The Allied Company.

By Mr. Belnap:

Q. The Allied Company sells the grain and to that man, to the purchaser is delivered the receipted freight bill and whatever registration of it with the transit bureau is by the man who purchased the grain?

Exam. Taylor: That was not the testimony.

Mr. Belnap: He said he didn't know. He assumed certain things and I think he was assuming things wrong and I think he now realizes, but he knows that they do not retain that paid receipt at all. They pass it on to somebody.

Mr. Day: Mr. Belnap, are you testifying to the facts?

Mr. Belnap: No, this gentleman on the stand is testifying.

Mr. Day: As I understand it you are making a statement contrary to what he testified to.

Mr. Belnap: No, but he testifies now that the paid receipted freight bill goes to the purchaser of the grain. Everybody knows that, Mr. Day.

Exam. Taylor: In connection with the registration on there Mr. Robbins, as I understood, said they would see to it that that was put in that way.

[fol. 1220] Mr. Belnap: I think he said he thought it was, Mr. Examiner, and I think he is now correcting his testimony. If he has not he can explain himself.

The Witness: I have nothing to do with that, Mr. Examiner, the freight outfit. Mr. Allen, who is the manager, has charge of that.

By Exam. Taylor:

Q. But you wouldn't know whether you had an arrangement to secure the benefit of a through rate, either combination or joint through, with the eastern lines? You would know whether you had, wouldn't you?

A. By "arrangement" you mean as a matter of some contract or agreement?

Q. Yes.

A. I am not sure we have not.

By Mr. Belnap:

Q. Now, in the course of your testimony I think you said that since the Mechling Barge Line had been towing the Allied Barge Corporation's barges there had been no occasions on which Mechling had performed for the Allied Grain Dealers that transportation service entirely on his own equipment. Since you gave that testimony have you had occasion to look into that situation further?

A. Yes, I have had and I find that on two separate occasions that Mr. Mechling furnished the equipment, both barge and towing, to handle our grain, on two different occasions.

Q. He provided the complete transportation service?

[fol. 1221] A. Yes, he did.

Q. And in that event do you know what transportation charge was paid?

A. It was 2¾ cents a hundred, as I recall it.

Mr. Belnap: That is all.

By Mr. Root:

Q. Mr. Robbins, does anyone other than a farmers' elevator or an individual engaged in the grain business own any stock in the Cooperative Allied Grain Dealers Corporation?

A. No, they do not.

Q. Now, let us take the example, for instance, of Mr. Mellen, who is the manager of the Mazon Elevator, who sells you some corn: Now, do you purchase that corn from him or do you act as his agent in shipping it?

A. We purchase the corn from him. I tell him what I will give him for the corn.

Q. And you actually make payment to him as soon as the weights are available?

A. Yes, I pay him the following morning, I settle with him for the corn.

Q. And that payment is made whether the grain is in your elevator or on a barge on the way to Chicago?

A. Yes, sir.

Q. Now, in such an event would the Mazon Farmers' Elevator have had title to the grain at the time they sold it to you or would it have acted as agent in buying it from the farmer?

[fol. 1222] A. They buy it from the farmer. They had title to the grain, yes.

Q. Would you just briefly state the steps from the farmer to your place, just what happens? There seems to be a little question on that.

A. Well, there would be no difference whether he bought the grain to ship by rail or whether he bought it to ship to the river. He in both cases bo-*th* the grain and settled for it with the customer.

Mr. Day: You say "he". Now, who does he mean by that?

The Witness: They were talking about Mr. Mellen at Mazon.

Mr. Root: We are talking about the Mazon Farmers' Elevator as an example, to show the various steps in the transaction from the farm to the Allied and from the Allied into Chicago.

Q. Now, after Mr. Mellen buys it from the farmer what does he do then?

A. Well, if the farmer,—or when the farmer is ready to shell the corn,—it might be sold several days before he shelled, before he was ready to shell,—but when he is ready to shell he calls up probably Mr. Mellen or goes to see him and tells him he is ready to shell and Mr. Mellen will call a truck or two if the farmer asks him to, and the sheller and send it out to the man's farm and he shells the corn.

Q. And hauls it where?

A. And he hauls it direct to the river.

[fol. 1223] Q. Now, on your books, the Allied Grain Company, do you show that as a purchase from Mr. Mellen's Mazon Farmers' Elevator or from the particular farmer?

A. It shows on our books as a purchase from the Mazon Farmers' Elevator.

Q. Just tell again how you sell that grain after the Allied once gets it at Morris?

A. Well, as soon as we purchase grain,—we do not speculate in grain and as soon as we purchase the grain,—in fact, we generally know what the market is before we pur-

chase it,—we sell it to someone, either through a commission house or direct to some terminal elevator.

Q. It is then shipped to Chicago, c. i. f. Chicago, is that right, from the farm?

A. That is right.

Q. And Allied's title parts when the grain is taken off in the marine, lake or terminal elevator in Chicago, is that right?

A. I understand when it is weighed in Chicago they complete the transaction.

Q. Now, Mr. Robbins, on cross examination I believe you stated that in making up the amount that you would bid to one of your stockholders or another elevator selling to you, that the difference was about three and a half or four cents under the Chicago cash market. Now, did that three and a half to four cents include this sum of 2¾ cents which you [fol. 1224] have stated as your expense in getting it into Chicago?

A. Yes, that included the——

Exam. Taylor: 2¼, isn't it?

Mr. Day: 2¼ is what he said, yes.

By Mr. Root:

Q. 2¼?

A. That included the transportation charge.

Q. It also included your expenses of elevation at Morris and any profit you might make out of the handling?

Mr. Day: No.

Mr. Root: I am asking him.

Mr. Day: You are leading into something that is contrary to what he testified to.

Mr. Root: Well, he hasn't answered yet.

Mr. Day: I object to your method as improper, as leading the witness, because it is contrary to what the witness said. He said that he made a——

Mr. Root: Just a minute, let me withdraw the question.

Q. Now, what else besides that 2¼ cents per bushel does that three and a half to four cents include?

Mr. Day: Well, now, I object to that question. The witness stated in answer to my questions that in addition to this 2¼ cents for freight, trimming and weighing and inspection they also made a charge for handling and profit,

which would run from three and a half to four cents per bushel. Now your question contemplates that that is all included.

[fol. 1225] Mr. Root: Well, now, here is just the point I am trying to bring out, that your impression is erroneous and I want the man to tell exactly what happened.

Mr. Day: I wrote it down as he said it here.

The Witness: I would like to make a record on it. I don't believe I made that statement.

By Mr. Root:

Q. Mr. Robbins, will you kindly straighten us out on just what that three and a half to four cents included?

A. The three and a half or four cents that we figure under our bid c. i. f. Chicago includes the freight and the trimming and inspection and our handling charge and a small profit.

Q. In other words, do I understand that means that includes everything that the Cooperative Allied Grain Dealers Corporation gets out of it, is that right?

A. That is all of it, yes, sir.

Q. And if you made any statement prior in your testimony which might be construed as contradictory to that do you want to correct it?

A. I do.

Exam. Taylor: The record will speak for itself.

By Mr. Root:

Q. Mr. Robbins, on cross examination there were a number of questions asked you in regard to some deductions which are or may be made on corn which for one reason or another does not grade. Now, are those deductions that are made on grain shipped by barge any different than the [fol. 1226] deductions that are made on corn to be shipped by rail?

A. No, they are not.

Q. As a matter of fact they are identical, are they not?

A. They are the same.

Q. Have you ever had any complaints from any of your customers as to the way you grade or test this corn that you handle in your elevator?

A. We have never had any complaints, no.

Q. And that, I take it, is 6,250,000 bushels that you handle, is that correct?

A. That is right, it is.

Q. Mr. Robbins, does the elevator located at Lisbon Center, Illinois, which is a stockholder in the Cooperative Allied Grain Dealers Corporation, have any rail facilities at this time?

A. No, they have not.

Q. On what railroad were they located?

A. They were on an electric line out of Morris. I don't know just what the name of it was but it was abandoned about a year ago.

Q. As a matter of fact it was the Fox & Illinois Union, or was the Fox & Illinois Union that used to go from Morris to York, is that right?

A. That is right, yes.

Mr. Root: I believe that is all, your Honor.

Exam. Taylor: Mr. Macaulay?

[fol. 1227] Mr. Macaulay: I have just one question.

Q. With reference to the discounts which are made, are those made in accordance with the standards set up by the Board of Trade of Chicago?

A. Yes, they are.

Q. And do you keep—do you endeavor to follow the grading as established under the Board of Trade regulations?

A. We try to follow it as closely as we can, yes.

Q. And are your charges or your discounts approximately the amount of discounts which will be afforded that grain when it reaches Chicago?

A. As near as we can tell it it is.

Q. And if the discount should be five cents or ten cents your belief is that that would be about the same discount as the grain would be discounted if it arrives in Chicago?

A. Yes, sir.

Exam. Taylor: Is that all, Mr. Macaulay?

Mr. Macaulay: That is all, yes.

Exam. Taylor: Any further questions?

Mr. Enoch: If your Honor please, in my questions to Mr. Robbins in connection with the Commission here of Illinois I referred to it as the "Illinois Public Utilities Commission."

Q. Would your answers, Mr. Robbins, have been the same if I had said "The Illinois Commerce Commission"?
A. Yes, they would.

[fol. 1228] Mr. Day: I have some questions on recross.
Exam. Taylor: All right.

Recross examination.

By Mr. Day:

Q. Mr. Robbins, will you fix the time for these two occasions on which Mechling furnished all of the equipment?
A. I can't fix the time unless I look at my records.
Q. You don't know approximately the time, since you started operations in November, 1938, when it would be?
A. I rather think it would be about last August but I am not positive as to that.
Q. About August, 1939?
A. Yes.
Q. In any case it would have been sometime last summer or thereabouts?
A. Yes.
Q. And at that time, Mechling charged 2¾ cents?
A. Yes, that was his regular charge.

Mr. Belnap: A hundred?
The Witness: That was per hundred.

By Mr. Day:

Q. Per hundred pounds?
A. Yes.
Q. Did you say "per hundred" at the time?
A. I think I did.
Q. And when the freight bill, such as exhibits 32, shows a charge of 1¾ cents for beans and 1.4 cents as the haulage [fol. 1229] charge for oats, that is merely, as I understand it, the arbitrary charge which you deduct in your buying and selling of this grain?

Mr. Root: Wait a minute, I don't understand that question. May I have it read to me?
Exam. Taylor: Read the question, Mr. Reporter.
(Question read.)

Mr. Belnap: I was going to inquire, when you use the word "you" are you speaking to him as the Allied Barge Corporation or the grain dealer?

Mr. Day: As the grain dealer.

A. You asked if I deduct that from the——

Q. You stated when you buy grain, when you buy corn you deduct 1¾ cents as the transportation charge?

A. Yes, that is right.

Q. And, therefore, the barge representative at Chicago, if he makes out these freight bills, merely shows that 1¾ to square the charge on the bill of lading with what your actual practice is, doesn't he?

A. Yes, but let me correct you. I don't deduct that from the price that I bid my customers. Is that what you meant? I make my bid and have already deducted the freight when I make my bid to him.

Q. That is what I say.

A. Yes.

Q. And as that deduction you use 1¾ cents per bushel?

[fol. 1229a] A. Yes.

Q. Now, then, your testimony is that you pay Mechling one cent for towing?

A. Yes. Well, that is a difference on the oats, see. On this oats——

Mr. Belnap: Just a minute, Mr. Examiner. I think that has to be straightened out. Who do you mean by "you"? The gentleman is testifying part of the time as manager of a grain dealers organization.

Mr. Day: He testified that they paid one cent to Mechling.

Mr. Belnap: Who? You don't identify him.

Mr. Day: It doesn't matter who. It is all one organization as far as I am concerned. This gentleman represents both the Allied Barge and the Cooperative Grain Dealers Corporation.

Mr. Belnap: I understand there is a relationship between them but I think the record would be clearer, Mr. Examiner, if we at least kept the legal entities in mind as we went along with the testimony.

Mr. Day: I am satisfied, Mr. Belnap, to have the witness specify.

The Witness: The Barge company, of course, is the one who pays Mr. Mechling.

Q. The Allied Barge——
A. The Allied Barge, yes, sir.
Q. ——pays Mechling one cent?

[fol. 1230] Mr. Belnap: One cent what?

Mr. Day: Per bushel. This is matter that he gave me in previous testimony.

Mr. Root: Get the bushels and per hundred straightened out.

The Witness: This is bushels on corn and beans and it is 8/10 of one cent on oats.

Exam. Taylor: Why that difference?

The Witness: Well, you can put more oats in a barge than you can corn.

By Mr. Day:

Q. Well, now, can you?
A. Yes, sir.
Q. Isn't the displacement of oats much more per pound than corn?
A. Not per bushel, though.
Q. Well, it is 32 pounds per bushel of oats?
A. Yes.
Q. And it is 60 pounds you figure for shelled corn?
A. No.
Q. 56?
A. Yes.
Q. So wouldn't there be a greater displacement, therefore?
A. No, there is not.
Q. Oats are what we regard as a light and bulky grain, aren't they?
A. Nevertheless you can put more oats in a barge than you can corn.

Mr. Root: You mean more bushels?

[fol. 1231] The Witness: I mean more bushels. You don't put more pounds in but you put more bushels in.

By Mr. Day:

Q. Now, let us get back on the track again, if these gentlemen have interrupted sufficiently. You were explaining that the Allied Barge pays Mechling one cent per bushel and that your deduction as the Cooperative Grain Dealers Corporation is 1¾ cents for transportation, is that right?

Mr. Root: Now, your Honor, I object to that line of testimony. The witness has said he didn't make any deduction. He has explained how he computed his bids to his customer and I don't like that word "deduction".

Mr. Day: He stated, and I wrote it down here, that 1¾ cents was what he deducted for freight. I will give you the figures, if you are making an objection, what the 2¼ is, if you want to hear them.

The Witness: That is right.

Mr. Day: The trimming was 35/100 of a cent; weighing and inspection was 15/100 of a cent; the freight was 1.75 cents; making a total of 2¼ cents that the witness deducted in buying the grain from his customers, from his clients or members.

Q. That is right, isn't it?

A. We deducted that from the price we paid to the customer, yes, that is right.

Q. Now, then, this 1¾ cents that your representative, or your joint representative with the Lowell Hoyt Company [fol. 1232] showed on the freight bill represented that 1¾ cents, did it not?

A. Well, part of it was 1.4.

Q. Or 1.4 in the case of oats?

A. Yes, that is right.

Q. But what you actually paid,—what your Allied Barge Company actually paid Mechling was one cent?

A. That is right, on the corn and beans.

Q. Yes. And that 1¾ cents shown on these freight bills had no relation to what Mechling actually charged?

A. No, not in that case.

Q. Now, you stated that you made settlements with your people when you had ascertained the weights whether it was when the grain was in the elevator or on the barges. Can you tell us just when you do ascertain the weights?

A. We ascertain that soon as it goes over the scales.

Q. At the elevator?

A. At the elevator, yes.

Q. Prior to loading on the barge?

A. Yes.

Q. Now, then, in view of your contradicting previous answers to questions I just previously asked you I would like to ask you again about this handling and profit item.

A. All right, go ahead.

Q. What do you deduct for handling?

A. Our handling cost was three-quarters of a cent.

[fol. 1233] Q. What do you deduct for profit?

A. Well, the rest of that three and a half to four cents, depending on conditions.

Q. Well, now, just tell me, please. Don't try to make your answers square with what was asked you on redirect. Just tell me what the actual figure is.

A. It is a sliding scale.

Q. What is the slide?

A. Well, from one cent to three-quarters of a cent.

Q. From one cent to three-quarters of a cent?

A. Yes.

Q. And this three-quarters of a cent for handling is constant, as I understand it. There is no slide to that?

A. Well, that was the average cost last year of handling.

Q. Is it constant or not?

A. It varies from day to day, perhaps not much.

Q. Tell us how much it varies?

A. It depends on how much grain goes over the scales.

Q. Tell us how much it varies, please.

A. I can't tell you how much it varies. If our expense is so much and we——

Q. Five-eighths to seven-eighths?

A. If our expense is about so much per day and we take in 10,000 bushels it is higher per bushel than it would be if we took in 30,000 bushels.

[fol. 1234] Q. Now, on these occasions when Mechling charged you——

A. What is that?

Q. On these occasions when Mechling charged you 2¾ cents a hundred that was for corn, was it?

A. No, one place was not for corn.

Q. What was it?

A. One was for oats.

Q. One was for oats?

A. Yes.

Q. And what was the other?

A. The other was for corn.

Q. The other was for corn?

A. Yes.

Q. And in what quantity?

A. Now, that may be either corn or beans. I wouldn't say whether it was either corn or beans.

Q. But in any case Mechling made the same charge to you?

A. Yes, that is right.

Q. Regardless of the commodity?

A. That is right.

Q. And what quantity, do you remember, that was shipped at that time?

A. There was just two barge loads.

Q. Two barge loads?

A. Yes.

[fol. 1235] Q. Were those barges of about equal capacity to yours?

A. I remember one of the barges was a large barge. I don't remember the other barge. I mean a 30,000 bushel barge.

Q. You call a large barge a 30,000 bushel capacity?

A. That is what I remember. The other one may have been a small barge; I don't remember plainly.

Q. You say you have never had any complaints about the grading of grain that you handled?

A. No, sir, we never have, that is right.

Q. Such complaints are common ordinarily, aren't they?

A. Perhaps.

Q. Well, you know they are, as a grain dealer, do you not?

A. Well, they haven't been common with us.

Q. Well, I mean they are in the trade, though, generally?

A. They are somewhat.

Q. Yes, but so far as your six million and a quarter bushels are concerned you have never had any?

A. That is right.

Q. And you would know it if you did?

A. Yes.

Mr. Day: That is all.

Exam. Taylor: Do you have any further questions?

Mr. Belnap: Yes, I have a question or two.

Exam. Taylor: Mr. Belnap.

By Mr. Belnap:

Q. I would like to just get straight in my own mind about [fol. 1236] who is doing what to whom. In other words, I would like to keep your grain corporation separate from your barge company, if I may, as I trace through these payments. Now, you speak about deducting 2¼ cents per

bushel. Am I correct in understanding that is the amount that the grain corporation takes into consideration in bidding the country elevator for grain?

A. That is right.

Q. The deduction is one in your own mind rather than in the statement rendered to the man from whom you buy, however?

A. That is right. It is in the prices and not in the statement rendered to him.

Q. Yes. Then the grain is in the possession of the grain corporation after that price is paid?

A. Yes, sir.

Q. And the grain corporation retains title to that until the grain arrives at the unloading point in Chicago?

A. That is right.

Q. Now, to get that grain to Chicago do you have an amount on corn of 1.3 cents a bushel?—I mean 1¾ cents a bushel?

A. Yes.

Q. That is, the grain corporation?

A. Yes.

Q. So I understand that is the amount that is paid to the barge corporation for the transportation?

[fol. 1237] A. That is right.

Q. And then the barge corporation in turn pays Mechling one cent out of the 1¾ which it gets?

A. That is right.

Q. It pays Mechling for the towing?

A. That is right.

Mr. Belnap: Thank you.

Mr. Brown: Who pays for this trimming, weighing and inspection?

The Witness: What is it?

Mr. Brown: If he wants it cleared up why doesn't he ask who pays for this trimming, weighing and inspection?

Mr. Belnap: I understood he explained the grain corporation did that.

Mr. Brown: That is right.

Mr. Root: That makes up the rest of the 2¼.

Mr. Belnap: Is that so, Mr. Robbins?

The Witness: Yes.

By Exam. Taylor:

Q. Mr. Robbins, your exhibit 39 purports to be the by-laws of the Cooperative Allied Grain Dealers Corporation of Morris, Illinois. Are there similar by-laws made by the Allied Barge Corporation?

A. Yes, sir.

Exam. Taylor: They are not in evidence. Do you want to put those in, Mr. Root?

[fol. 1238] Mr. Root: I can supply that all right. We haven't got any here. It may take a day or two to get them up from Morris.

Exam. Taylor: Will you try and do that?

Mr. Root: I will try and do that.

Exam. Taylor: Is that all from this witness?

Mr. Root: Wait, I beg your pardon. We have no printed by-laws of the barge corporation. The only by-laws of the barge corporation are the ones in the charter. We have none printed.

By Exam. Taylor:

Q. Are you familiar with the charter of your company, of the barge corporation?

A. Of which company?

Q. Of the Allied Barge Corporation?

A. I think I am, yes.

Q. It is incorporated to do what kind of business?

A. Mr. Enoch has that charter here.

Q. All right. Are you familiar with it? You are president of the company.

A. Well, I am fairly well familiar, yes.

Q. I just am asking you if you know what business the barge company is permitted to do under the certificate of incorporation?

A. They are permitted to transport grain and buy and sell grain, I believe that is in there, and other commodities.

Q. Transport for whom?

A. No one. It is not specified as to whom.

Q. But you do not exercise that power? Instead you [fol. 1239] allege that the transportation is performed by Mechling.

Mr. Root: Your Honor, I did not hear that question. May I have it re-read?

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

The Witness: Well, it is performed by Mechling to this extent. He pushes the barges owned by the Cooperative Barge Corporation.

By Exam. Taylor:

Q. Well, do you take the position that you do not transport this grain?

A. No, I do not take that position. I take the position that we do transport the grain. The barge corporation you mean?

Q. Yes.

A. Yes.

Q. And they are what kind of a carrier?

A. Well, we are probably a private carrier.

Q. A private carrier?

A. I imagine we would be classed that way.

Q. It is not open to the public?

A. No, it is not.

Exam. Taylor: Anything further from this witness? Witness excused. Next witness.

(Witness excused.)

Mr. Root: I would like to call Mr. L. J. Norton.

Exam. Taylor: Very well.

[fol. 1240] L. J. Norton was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Will you state your name, please?

A. L. J. Norton.

Q. What is your business or occupation?

A. I am professor of agricultural economics in the University of Illinois.

Q. Will you state what experience you have had in regard to that matter, I mean in your line, in your profession?

A. Well, I was graduated from Cornell University College of Agriculture, took a doctor's degree in agricultural economics from that institution in 1921. Since that time I have been employed by Cornell University and the University of Illinois in research work and in teaching in fields related to marketing and other agricultural economics lines, except for a period of two years and a half when I was with the Farm Credit Administration.

Q. Are you familiar with the issues in this case?

A. Yes, sir.

Q. They are, namely, the amendments to tariffs filed by eastern carriers which will remove reshipping privileges to the East from ex-Illinois waterway grain.

A. That was my understanding of the question.

Mr. Enoch: I think it is a little dangerous to try to re- [fol. 1241] cite the issues that way. I think they are very much broader than that.

Mr. Root: Well, you can cross-examine him on that.

Mr. Enoch: Well, but I thought perhaps the witness might be misinformed by that statement.

The Witness: May I speak of them? I understood that the hearing dealt with the question of the privileges of reshipping grain that came to Chicago from the Illinois waterway.

Mr. Enoch: That is right.

The Witness: That is what I understood that the purpose of this hearing was.

By Mr. Root:

Q. Have you prepared a statement that you would like to make in this case?

A. Mr. Examiner, Mr. Chester A. Hunt, who is the president, as I understand it, of the Farmers' Square Deal Grain Company of Morris, Illinois, which company is a stockholder in this Allied Grain Company which has been discussed here today, asked me to appear and explain my views concerning the grain traffic which has developed on the Illinois River and waterway. I have known Mr. Hunt for a good many years and apparently some statement which I had made, or was reported to have made, disturbed him and he wanted to get my views on the matter straight.

Mr. Enoch: Will you pardon me just a moment?

The Witness: Yes, sir.

Mr. Enoch: If your Honor please, if we are not going to [fol. 1242] be apprised of what is to be developed here by questions, I wonder if counsel wouldn't state just what subject this witness is going to testify about?

The Witness: May I answer that?

Mr. Root: Go ahead and answer it. You can answer it better than I can.

The Witness: The question that I was going to discuss was the effect which, in my opinion or in my judgment, of the development of this grain traffic upon prices paid to farmers in the territory served by the Illinois waterway.

Mr. Enoch: I want to register an objection to that type of testimony. I don't think that is a subject that can be dealt with by expert station. This thing has been in practice here for two or three years and the Commission can draw its own conclusions from the facts that are recited by the witnesses who are familiar with them.

Mr. Root: May I ask a question, then?

Exam. Taylor: Yes.

By Mr. Root:

Q. Are you familiar with, or have you made a special study and are you familiar with the conditions in the Illinois waterway district?

A. I was getting ready to state——

Exam. Taylor: Just a moment. Counsel asked you a question.

By Mr. Root:

Q. You are familiar?

A. Yes, sir.

[fol. 1243] Q. You have made a study of those conditions?

A. I have followed the developments of the growth of this traffic and the things related to it since 1936.

Exam. Taylor: You may proceed.

By Mr. Root:

Q. Proceed.

A. As I have just indicated, in 1936 I was given the responsibility for economic studies in grain marketing at the

agricultural experiment station of the University of Illinois. It seemed to me that the changes in methods of transporting grain should be studied. The most obvious of these changes were, first, the increased use of trucks and, second, the movement of grains on the Illinois and Mississippi rivers and connecting waterways. Since 1936 I have maintained contact with the developments in connection with movement of grain on these rivers and observed the growth in volume and the development in assembling methods. Anyone familiar with grain marketing knows that grain tends to move by the cheapest transportation route available and that extensive use of water routes is made whenever they are available. The best example is the extensive grain traffic which has developed on the Great Lakes between ports close to producing areas and ports close to consuming and exporting points in the East. Grain is a cheap, bulky and relatively non-perishable commodity which tends to move by water when water routes are available. It was therefore natural for a heavy grain traffic to develop between points [fol. 1244] in the heavy grain-producing sections adjacent to the Illinois waterway and Chicago when a waterway became available to provide cheap transportation. Associated with this development, of course, was the growth of a system of improved highways and use of better trucks, which cheapened assembling at the rivers. The development of an extensive trade in grain on the river is evidence that it did provide a cheaper means of transportation and higher returns to the producer. Otherwise the traffic would not have developed nor would the farmer have altered his marketing arrangements. For the past three years we have had at the University of Illinois a session dealing with grain marketing during our annual Farm and Home week, to which large numbers of farmers and farm people come. In January, 1939, at this session, I discussed the topic: "Grain Transportation on the Illinois River." In this talk I made the statement, "It should be noted that the producer gets only a part of the saving in transportation (from use of lower cost river transportation.)" I put that in in order to indicate the point of what I was talking about, the subject I was discussing. What I meant by this is obvious, I think. To illustrate, if a rail rate is 10 cents per 100 pounds and a competing water rate is 4 cents, the producer does not get the entire difference of 6 cents per 100 pounds,

which would be equivalent to 3.36 cents per bushel of corn. The grain must be hauled to the river and this involves expense. Also the expenses and profits of the new facili- [fol. 1245] ties on the river must be borne by some one. As the distance from the river is increased, the grain has to be hauled longer distances to the river. The difference in cost between hauling to the river and to a local elevator then increases. At some point back from the river the costs by the two methods, namely, first truck to local elevator and rail and, second, truck to the river and barge, are equal and then the traffic to the river ceases. In other words, some part of the apparent saving in freight by river as compared to rail haul is absorbed in assembling the grain for shipment at the river. At Morris, Illinois, which is a large shipping point, a large volume of grain, especially corn, is produced within a short radius. Also, two river elevators compete for business at that point. This large volume of grain close to the river and the competition that exists there, together with the large volume of grain that has moved by river from Morris, indicate clearly that prices received by farmers in that vicinity are higher than they would be if there were no river traffic. The question at issue is one involving the continuation of the privileges of reshipping grain received at Chicago by river barge at the same rate as applies to grain received on so-called Illinois proportional billing. Presumably the ability to reship grain on such billing makes the ex-river grain worth more at Chicago than it would be if such privileges were denied. I have made no study of the effect of billing on discounts at Chicago. At St. Louis, however, a study [fol. 1246] was made under my direction and it indicated that "no tonnage" wheat in that market sold in 1937 and 1938 at average discounts of 1.3 cents for No. 2 red winter wheat and of 1.2 cents for No. 3 red winter wheat when compared with prices of similar grades carrying railroad billing. Market channels can be made or closed by comparative transportation costs. Producers of grain in Illinois are anxious to keep open the most economical channels so as to reach the widest possible markets. The river traffic in grain has grown up on the basis of lower aggregate costs and by access to the reshipping privileges which have helped to establish Chicago as a leading grain market. The interests of the producers of grain who are

located within reasonable hauling distance from shipping points on the Illinois waterway will be best served if rate privileges regarding reshipment from Chicago of grain received from the waterway are retained. That completes my statement.

Exam. Taylor: Anything more on direct?
Mr. Root: That is all, your Honor.
Exam. Taylor: Any other questions?
Mr. Belnap: No. I haven't any, Mr. Examiner.
Exam. Taylor: Cross-examine.
Mr. Bradford: I have one question.

Cross-examination.

By Mr. Bradford:

Q. Mr. Norton, do you believe that a man or a farmer living ten miles east of Kankakee, Illinois and trucking [fol. 1247] grain to Kankakee can pay a higher freight charge to the Eastern markets than a farmer ten miles east of Morris and trucking grain to Morris?

A. Well, if one is accessible to a transportation route that has a lower competitive cost I should think that the farmer who is accessible to the transportation route should be entitled to the benefit of that lower rate.

Q. If the farmer at Kankakee,—or east of Morris is able to secure a better price would that have any effect on the price that the man east of Kankakee receives on that trucked grain into Kankakee where the freight charge is higher?

A. Well, as between the two the man with the lower transportation cost would receive the higher net price but I don't see that that would—that necessarily that lowers the price received by the farmer who does not have the access to the cheaper transportation.

Q. You cannot see any difference between hauling grain via a privately owned barge line or by a privately owned truck line when that grain gets to market. Is there any difference in that grain from a transportation standpoint east of that market?

A. I think, Mr. Examiner, that that question involves—the answer to that question involves a technical knowledge of traffic matters which I do not claim to have.

Mr. Bradford: Mr. Examiner, the witness made the statement that he conducted a study as to the effect that the

[fol. 1248] withdrawal of these reshipping rates would have on the price.

The Witness: And I said that I thought that at times it would lower the value of that grain and that would be a detriment to the man who now had that.

Q. I am just trying to develop that further and see what effect it has on the price of grain generally and asked him if when that grain that moves by barge, privately owned barge, gets to market, if there is any difference in that grain when it moves out of the market than it would if it arrived by truck? Now, he made a statement on direct that he had conducted an investigation and one of the elements that he investigated was movements by truck. I have listened very carefully.

The Witness: I said that the two lines—the statement that I made,—may I explain the statement I made? I said that looking into the field the new developments in transportation were important and the two new developments in transportation which were of importance were, first, the trucking of grain and, second, the use of waterways, but from then on I didn't say anything about that I had studied trucks but as you asked the question the second time I am willing to answer it; that is, as you restated the question I would be willing to answer it, if I may have it read to me.

Exam. Taylor: Read the question, Mr. Reporter.

(Question read.)

The Witness: On the first part of that question, it does [fol. 1249] not seem to me that the mere fact that grain moves to Chicago and is paid for at Chicago prices reduces the Chicago price of grain. Therefore, I don't see that a lower price is thereby reflected back to the other producers. Now, the second part of the question, I would say that corn was corn, at least so far as its feed value is concerned, and the corn that is received by truck has as much feeding value in it as corn that is received by river barge. Now, the question of the prices which are extended to the reshipping of grain received in different ways is a highly technical matter which has grown up over years, with all sorts of entanglements back of it and on that particular question I do not pretend to have any specialized knowledge.

By Mr. Bradford:

Q. The reason I asked the question is because you conducted an investigation as to what effect the withdrawal of this privilege would have and now you say it is technical and you don't know anything about these privileges.

A. No, I am saying it is technical as to whether it should be applied to trucked grain as against rail grain. I repeat the statement I made in my testimony or in my statement, that the withdrawal of this privilege from barge receipts would at certain times of the year, it seems to me, lower the value of that grain.

Q. May I ask you this question? If the reshipping rate is 26 cents, which it is, from Chicago to New York on the barge grain and grain is trucked to Kankakee, a directly [fol. 1250] intermediate point, and the rate from that point is 34½ cents, do you believe that that would have any effect on the price paid to the farmer in the vicinity of Kankakee when the grain from Chicago moves right through Kankakee?

A. Yes, but is not the elevator here paying on the basis of the,—the elevator operating in the vicinity of Kankakee pays the prices, the Chicago prices, less the cost of shipping the grain to the Chicago market?

Q. He is hauling this grain to Kankakee.

A. All right. Doesn't the same thing apply at Kankakee?

Q. Doesn't the Kankakee man have to take into consideration the price it is going to cost him to get it there when he bases his price he pays to the farmer?

A. I would think that the dealer at Kankakee will pay a price to the farmer for grain based upon all of the outlets which he has for grain and he will take advantage of the one which returns him the highest price and pay the farmer accordingly.

Q. You feel he would take into consideration what it costs him to get to the consuming territory?

A. Of course.

Q. And if that is higher to the man at Kankakee on the grain received by truck than it would be to the Chicago dealer of that grain received by barge he naturally would take that higher cost from the producer when he bought it. That is all.

A. Well, I think that condition would have obtained be-
[fol. 1251] fore the barge traffic developed.

Mr. Bradford: That is all.

By Mr. Enoch:

Q. You referred to this proportional rate as a privilege and you say that the barge grain should have this privilege of the lower rate. That is what you referred to in your statement?

A. I would say it was a privilege.

Q. Yes. Now, no matter how absurd you think this next question is going to be I want you to answer it. Assume that a man raises a hundred bushels of corn over here in Grant Park at Chicago and wanted to ship it East, should he have that privilege of the proportional rate?

A. He is loading the grain—may I ask, to clear up the question, in my own mind,—he is loading the grain out in a freight car at Grant Park?

Q. No. He is going to go to the depot with it.

A. Depot where?

Q. In Chicago. Maybe he will haul it a mile or two miles or a half a mile.

A. Well, the——

Exam. Taylor: The question is do you think he should have the advantage of this proportional rate?

The Witness: There has been no freight movement into this market. The grain is shipped from Chicago? Well, my answer would be "No".

[fol. 1252] By Mr. Enoch:

Q. He should not have it?

A. My answer would be "No."

Q. Now, Mr. Norton——

A. Because, as I understand it, these proportional rates grow up around markets. That is to say, they are developed to equalize—they are developed around the grain trade out of a given market and this particular person, the farmer, has to find some way of getting his grain into the Chicago market I would say.

Q. All right. Now, suppose that instead of taking it direct to the depot he sells it to a grain dealer here in Chi-

cago and the grain dealer puts it in the elevator at Chicago or South Chicago and later ships it out, should that grain move on a proportional rate, have the privilege of moving on the proportional rate?

A. I wouldn't think that the example that you cited falls within the theory around which I understand these proportional rates and reshipping privileges have been developed.

Q. Well, how far away from that depot or elevator do I have to go before I can come under this theory that seems to be important to you?

A. Well, I would say a particular farmer would have to go out to correspond with the—would have to fit into the pattern which has been developed in thi. w' ole scheme of reshipping rates, so I don't know that I could definitely answer your question as to how far out he should go. He has got to take advantage of the pattern of rates which [fol. 1253] have grown up.

Q. Morris is about 70 miles from Chicago, isn't it, or thereabouts?

A. Yes.

Q. Now, take a farmer north of Morris, fifty or a hundred miles away, he has got a farmer, he is a good corn producer and he doesn't have any waterway, so he hires a trucker to handle his corn into Chicago and if he has a truck of his own he hauls it in: Should he get the privilege of the proportional rate?

A. As I understand, those privileges have never been extended to truck shipments.

Q. Should he have them?

A. Well, I don't see how he could have them if the rates have been built——

Q. Why not?

A. Well, because they have never been extended. That is to say, as I understand it there has never been any integration of rail and truck rates which provide for reshipping priveleges on truck grain.

Q. Will you ignore the past history of the rates?

Exam. Taylor: Just a minute. Do you understand that there is any integration of the barge and the rail rates?

The Witness: I understand that such privileges have been in existence.

Q. You used the word "integration." I want to know the method.

[fol. 1254] A. May I change the word "integration" to the word "application?" The application of reshipping rates to grain received by truck, if I may make that change. Just changing the word "integration" to "application".

Q. What Mr. Enoch has in mind, the grain that moves up to Chicago from this point fifty or a hundred miles out also pays a rate to the truckers, just the same as the man at Morris pays a rate on the barge.

A. May I repeat what I said, that as I understand there has never been any—and I believe I am correct—application of the reshipping rates on grain received at a market via truck.

Q. Why shouldn't there be?

A. It seems to me that that question, if I may say so, goes beyond the issues involved in this case here.

Mr. Day: You are testifying as an economist, aren't you?

The Witness: Yes, sir, that is right.

Mr. Day: The witness, as I understood it, was testifying as an economist from the University of Illinois.

The Witness: That is right.

Mr. Day: Not as a partisan witness for one side or the other.

The Witness: No.

Mr. Day: The questions that both Mr. Enoch and the Examiner propounded are questions of economics.

Mr. Belnap: May I inquire who is cross-examining the [fol. 1255] witness now?

Exam. Taylor: Proceed.

Mr. Day: I will be properly introduced to you after a while.

Mr. Belnap: I would like to make this observation, if the Examiner please: As I understand it, the Interstate Commerce Commission has ruled that under its construction of the Motor Carrier act there cannot be proportional rates applicable on a truck-rail movement. That under their construction of the Act, if there is a movement by truck and rail it must be a movement under a single factor rate. I may be wrong in that but that is my understanding of what the Commission has ruled. I understand they have come to that conclusion on the theory that when Congress regu-

lated motor trucks it made no provision for anything else, so it seems to me that this rather academic discussion is even beside the point even if we confined it to the economic basis, which is the only thing the witness directed himself to on direct.

Exam. Taylor: Now you are right.

Mr. Belnap: This witness has not qualified himself on the technicalities of rate making. He is talking about economics, about economic conditions.

Mr. Day: We do not agree with Mr. Belnap's legal conclusions on this proposition, Mr. Examiner.

The Witness: May I answer the question——

[fol. 1256] Mr. Day: Let the record so show.

Exam. Taylor: What is the question?

Mr. Enoch: I would like to ask a question now.

The Witness: All right.

Q. Will you divorce this from the rate situation and the theoretical situation this is in and just tell me what your opinion is as an economist, in equity and good conscience, why if the man bringing corn up the river 70 miles by water is, as you say, entitled to this so-called privilege and a man coming the same distance in his own truck is not entitled to the same privilege?

A. Well, the answer I would make to that is that the man coming up the water is more accessible to a cheaper method of transportation than the man coming 70 miles by truck.

Q. Well, would you say, then, that the man who has to pay the higher inbound rate should pay the higher eastbound rate also?

A. The answer to that question, it seems to me, is tied up with the whole question of proportional rates.

Mr. Day: You are trying to testify as a rate man.

The Witness: No, I am not.

Mr. Root: No, he is not.

The Witness: Excuse me, I am not. I am saying that the answer to that question is tied up with the whole question of rates.

By Mr. Enoch:

Q. What did you mean when you said that the man shipping by water should have the benefit or the privilege of [fol. 1257] this lower proportional rate?

A. I said because he has access to a cheaper method of transportation.

Q. You mean——

A. That, I think, is an economic question.

Q. —so far as eastbound movement is concerned?

A. So far as the movement to Chicago is concerned.

Q. Yes, but you understand that this water situation does not have any effect east of Chicago. That is an all-rail movement.

A. That is part of it. Of course, part of it is by the lakes and part of it by rail east of Chicago.

Q. No, I am talking about the all rail rate out of Chicago. You haven't been,—haven't you been talking about that all the time?

A. Yes, that is right but the way you phrased the question I thought you meant all the movement out of Chicago was by rail.

Q. As I understand your theory, if a man has the cheapest method of bringing his corn into Chicago he should have the cheapest method in moving it out and the fellow who has to pay a little bit higher coming into Chicago must pay something higher getting out so that his total charge will be doubly higher than the man who comes in by water. Now, if that is your opinion will you tell me what the economics of that situation are?

Mr. Root: I wonder if we can have that question read?

Exam. Taylor: Read the question, Mr. Reporter.

[fol. 1258] (Question read.)

The Witness: Well, the comparison——

By Mr. Enoch:

Q. First, is it your opinion?

A. Yes, sir.

Q. All right. Now why?

A. It is a statement of the background for my opinion. The comparison I made is between the cost of reshipping grain, charges for reshipping grain which go out by rail but come in either by rail or water and the position I have taken is that grain that comes in by water is entitled to go out at the same rate as the grain that comes in by rail. Now, may I complete the statement? And the reason for that is that this grain coming in by water comes in by the

agency which can furnish the service at a lower cost. Now, when you come to the question of trucks, which is, after all, the high cost way of bringing it in, my opinion is that until there was a complete integration of rail and trucking operations that the grain coming in by truck would not be entitled to these reshipping privileges.

Q. Let me get your idea on this. Assume, which I think you will be perfectly willing to assume, that it costs a man 75 miles away from Chicago more to move his grain into Chicago by truck than it does a man half that distance from Chicago by truck——

A. I would agree with that, yes.

Q. —now, would you say that the man who moves inbound the greater distance should pay the higher rate out-
[fol. 1259] bound and the man who moves inbound the shorter distance should pay the lower rate outbound?

A. Well, at such times that that was more than a theoretical case there would have to be some equalization of outbound costs in order to maintain parity between various markets and if that grain going out went out at the same rate then the man's grain which came in the longer distance would have a lower value at the farm than the one which came in the shorter distance because it would accumulate more costs.

Q. Should it pay the higher rate?

A. What?

Q. Should it pay the higher rate?

A. From where?

Q. From Chicago.

A. Well, I should think until such time as there was an equalization that the grain going out of Chicago would carry the same rate. That is to say, presumably the costs of moving——

Q. Water and truck and rail ought to carry the same rate?

A. No, all moving out by the same means of transportation, by rail.

Q. Have you studied the effect of this so-called cheaper inbound rate to Chicago by water upon the destination prices in the East at which this grain is ultimately sold?

A. No, sir.

Q. You haven't given any thought to that at all?

[fol. 1260] A. In my——

Q. Have you got an opinion on whether——

Mr. Root: Let him answer the question.
Mr. Enoch: What?
Mr. Root: He didn't get a chance to answer the question.
Mr. Enoch: I beg your pardon.
The Witness: I said I had not studied the question.

Q. I understood that to be your answer. Would you care to express an opinion as to whether or not it has any effect from an economic standpoint on the destination price?

A. Yes, sir, I will be willing to express an opinion.

Q. What is your opinion?

A. But it is based upon a general analysis of the market and not on any detailed studies I have made myself. I want that understood.

Q. Yes.

A. In the first place, the increase in volume of grain, or the grain coming into the market, Chicago, via the Illinois waterway could, it seems to me, lower the market price here in two ways, which is what I take it is your question.

Q. No, I am talking about the destination price in the East to the consumer, not the merchant.

A. Well, it seems to me that the grain that is billed out at a certain price would carry the same costs to the consumer whether it comes in via the waterway or whether it [fol. 1261] comes in by rail. Since it is paying the same freight out I don't see why there would be any difference in the price that the consumer paid.

Q. Do you think, then, that the application of this proportional rate on eastern grain,—on water borne grain hasn't any effect on the destination prices to the consumer?

A. Unless it would lower the price in Chicago and then it would lower the whole market and that is what I was,—you asked about its effect on the Chicago price? I don't see how it would affect eastern prices except as it might affect the prices in Chicago.

Q. Wouldn't the answer that you have just given depend wholly on the assumption that these shippers along the Illinois waterway were in position to supply the entire consuming territory with grain?

A. No, I don't think so. It was based upon the assumption that the prices at which grain would be offered for shipment East would be substantially equal on grain whether it came in by water or whether it came in by rail. That is what my answer was based on.

Q. I don't understand that answer if you don't assume just what I have stated because I don't think there would be any explanation possible by you or anyone else as to how any of these other merchandisers of grain at Chicago that get their corn from some other place than along the Illinois waterway could compete with the men who get their grain from points along the waterway.

A. Well, if what you assumed is true, that they sell at [fol. 1262] the same price, they could only compete if they bought grain cheaper from farmers.

Q. Have you thought about that?

A. Well, I mean to say they bought grain cheaper from farmers who are located at points which have higher costs to Chicago than the farmers who are accessible to the waterway. That is what I mean by higher cost. I am not talking of this higher cost at the particular time.

Q. You are particularly interested in the farmers of Illinois?

A. That is right.

Q. Have you given any consideration at all to the effect of this socalled cheaper transportation by waterway on the farmers who are not in position to take advantage of it?

A. Well, that didn't come in my testimony.

Q. No.

A. No. Unless it affects their ability to sell grain in the Chicago market I don't see how it affects them at all.

Q. Well, has it affected them?

A. Well, that goes back to the question which I tried to answer before, or tried to express an opinion on before. That was the question as to the fact or the effect that this grain might have upon the price at the Chicago market and my statement on that point would be that since the volume of grain,—no greatly increased volume of grain has moved into the market because of the waterway in my opinion, [fol. 1263] and that is based upon studies I have made as to how that corn used to be marketed that now comes via the waterway,—since I don't believe there has been any great increase in volume for sale, since I don't believe that the people who are offering this grain via the waterway are selling it below the market prices, I say I don't believe,—I believe it is my opinion that they do not sell it below the market price. I think they are selling it at the current

established market price for grain on the Chicago Board of Trade which, as you know, is rather a fixed thing.

Q. Well, how can a dealer here in Chicago pay relatively the same price for corn to a farmer who cannot ship his corn along the waterway as another dealer who buys corn that can be shipped along the waterway when in the latter instance they have an eight or ten cent cheaper freight rate outbound upon which they can lay that down to the consumer?

Mr. Belnap: May I have that question read, please? I would like to hear the question.

Exam. Taylor: Read it, Mr. Reporter.

(Question read.)

The Witness: I would not assume that that was true. That is, it is my impression,—of course, it could be answered by definite analysis,—that the bulk of the grain that is reshipped from Chicago by rail comes in here on Illinois proportional rates which carry the same outbound rate as does the grain which comes in by water.

[fol. 1264] Exam. Taylor: Just a minute. We will recess for five minutes.

(Whereupon a short recess was had.)

Exam. Taylor: All right, gentlemen, come to order. Mr. Enoch, had you finished?

Mr. Enoch: I have finished.

Mr. Day: I have some questions.

Exam. Taylor: Mr. Day?

By Mr. Day:

Q. How long have you been connected with Illinois University?

A. Well, I first came to the University of Illinois in 1923, in September, and I was there continuously until September, 1934, when I had a year's leave of absence to work with the Farm Credit Administration. I returned to the University of Illinois in 1935—I beg your pardon, I left in 1933 and came back in 1934, was there for one more semester and left for another year and a half. I came back in September, 1936, and have been there since then.

Q. You are located at Champaign or Urbana?

A. Urbana.

Q. And the Illinois University is a tax supported institution?

A. It is supported by the State of Illinois.

Q. How long have you known Mr. Hunt?

A. I probably met Mr. Hunt in 1929. He attended a meeting which I addressed in that section of Illinois.

[fol. 1265] Q. You addressed a meeting under the auspices of Illinois University?

A. That is correct.

Q. You met him at that time. Now, when did Mr. Hunt ask you to come here and testify?

A. Last Thursday morning, I think.

Q. Did he call on you at Champaign?

A. He called at my office.

Q. In person?

A. In person.

Q. Did anybody help you with the preparation of your statement?

A. No, sir.

Q. Have you in the past testified in other proceedings for Mr. Hunt?

A. No, sir.

Q. Is Mr. Hunt paying your expenses here?

A. There have been no arrangements made about expenses. I assumed that they are paid by the University.

Q. I see. Now, I take it from your testimony that you were under the impression that the railroads had so arranged their tariffs as to provide for reshipping rates on grain barged into Chicago from the Illinois River?

A. My understanding is that that grain coming in here can be reshipped at the regular reshipping rates.

Q. You don't know that the railroads never made any [fol. 1266] provision in their tariffs to take care of this grain, do you?

A. I have never looked into that matter so my answer would be "No."

Q. The movement, of course, on the Illinois River——

A. Or my answer would be that I don't know.

Q. This movement on the Illinois River you do know did begin only a few years ago?

A. That is correct.

Q. Yes.

A. That is, the present type of movement on the Illinois River began a few years ago.

Q. And you did not know that the railroads, in order to take care of a movement on the Illinois River, had made no change in their tariffs from what they had been previous to this movement, did you?

A. I assumed that the reshipping rates which are under discussion here today had been in effect on the movement since it began.

Q. You assumed that when this movement started that the railroads published some tariffs?

A. No.

Q. Or provided in their tariffs for it?

A. I assumed that that gave them the—that they applied the reshipping rate. I haven't examined the question as to whether they provided for it in their tariffs.

Q. Well, you are under the impression that the railroads [fol. 1267] did do something to provide for the movement of this barge grain?

A. I am under the impression that they applied the reshipping rates.

Q. You don't know, as a matter of fact, that they had done nothing, that their tariffs stand today just as they did twenty years ago?

Mr. Belnap: Mr. Examiner, he is stating an incorrect fact to the witness.

Mr. Day: I am asking him.

Mr. Belnap: Mr. Examiner, here is a witness who has not talked about tariffs.

Mr. Day: Yes, he has talked about tariffs.

Mr. Belnap: I object on the ground it is beyond his direct. If that objection is not sustained I will make another one.

Mr. Day: He has talked about proportional rates. *he* has talked about the railroads having provided for those proportional rates.

Mr. Belnap: I object on the ground this is going beyond the scope of the direct.

Exam. Taylor: Objection overruled.

Mr. Belnap: Then I object further on the ground that Mr. Day's own witness, Mr. Tannehill, pointed out specifically this fact that the eastern lines did make changes in their tariffs on the question as to whether or not the proportional rates were applicable on the ex barge grain.

[fol. 1268] Mr. Day: Mr. Belnap is mistaken.

Mr. Belnap: That happened in the last twenty years. I cannot give the exhibit number now but I can find it later.

Mr. Day: Mr. Belnap is mistaken.

Exam. Taylor: The record will speak for itself.

Mr. Belnap: My objection is that he is asking the witness a question predicated on a statement of fact which is incorrect.

Exam. Taylor: Your objection will be noted on the record.

The Witness: My answer is I haven't examined the tariffs in these cases.

By Mr. Day:

Q. And you don't know whether they are the same or different from what they were before this barge movement started, is that right?

A. Well, I——

Mr. Belnap: Mr. Examiner, I submit that he is disqualified from giving any answer at all because he says he has not examined the tariffs.

The Witness: I presume these tariffs have been changed from time to time.

By Mr. Day:

Q. But you don't know just what the tariffs provided at any given time, isn't that right?

A. I haven't examined the tariffs in detail, that is right.

Q. Now, in answer to Mr. Enoch you stated that a movement out of Chicago to the east via rail should be handled at lower rates but in the instance of grain coming into [fol. 1269] Chicago by barge than when grain from the same or similar point of origin is hauled into Chicago by truck because you said that the barge charge in that case would be cheaper and, therefore, the shipper should be entitled by the same token to a lower charge east of Chicago. Now, assuming that Allen & Company, a large grain dealer here in Chicago—or Bacon & Company, a large grain dealer here in Chicago, moves four million bushels of corn into Chicago by truck every year and he moves it by truck because he finds it is cheaper to handle it that way than by barge, now assuming such cheaper truck travel into Chicago would your answer then be that he should be entitled to a lower charge east of Chicago on the truck grain?

Mr. Belnap: Just a minute, Mr. Witness. I make the objection that a hypothetical question has been asked for which there is no predicate in the record.

Mr. Day: I submit there is a predicate in the record.

Mr. Belnap: There is no showing that——

Exam. Taylor: This witness was introduced on the economic stage of this proceeding.

Mr. Belnap: That is not the basis of my objection, Mr. Examiner. My objection is that he now says, "Assuming there is a lower charge by truck than by water" and I say there is no predicate for that.

Exam. Taylor: The question goes to the economics. The witness may answer if he knows.

[fol. 1270] The Witness: The economics or an economic answer to any question must assume some knowledge of the structure which is being discussed.

By Mr. Day:

Q. Well, you are testifying as an expert witness now.

Mr. Root: Let him answer.

Mr. Day: No, I don't want the witness to argue my answer.

The Witness: I am not going to argue my answer. I want to state the assumptions upon which my answer was based.

Q. Well, I am doing the assuming now. Now, you give the answer.

A. All right. I think the question of reshipping rates upon truck grain involves assuming interrelationships in the effect on the whole grain structure which, I take it, is an economic question that——

Exam. Taylor: Your answer is not responsive to the question.

By Mr. Day:

Q. Assume everything else is equal except the difference in the transportation charge into Chicago.

A. Under existing conditions I would think it would not be desirable to apply the reshipping rates on truck grain.

Q. Don't you want to answer the question?

A. I thought that was the question.

Q. No, it wasn't an answer.

A. All right.

Q. Let me recall to you your previous testimony now, that assuming that barge transporation is cheaper than truck transportation into Chicago——

[fol. 1271] Mr. Root: I beg your pardon.

Exam. Taylor: Just a minute, now, we will have order.

Mr. Day: Just a minute, please. You can have the witness back on redirect.

Exam. Taylor: We will have order. Mr. Day, state your question without interruption.

By Mr. Day:

Q. You have previously stated, Mr. Norton, that in the event of a cheaper transportation by barge into Chicago than by truck, because of that cheaper transportation inbound the shipper should by the same token be entitled to cheaper transportation outbound.

A. I think my statement was cheaper transportation by barge than by rail.

Q. Well, the question addressed to you, though, whether you understood it or not, was truck versus barge into Chicago. You did not understand it when you answered previously, is that it? You thought that the comparison was between barge and rail into Chicago?

A. I am stating now that I thought my answer was between barge and rail.

Q. All right. Now, then, assuming this comparison that I am making between cheaper transportation by truck into Chicago than by barge, should that trucked grain be given a lower rate cheaper than the barge grain eastbound?

A. I am going to reply the same, the answer that I gave before.

[fol. 1272] Q. What is that?

A. That with the present knowledge I have I don't think it is advisable to apply these reshipping rates, which is a lower rate than now applies on trucked grain, to grain that is received at market by truck.

Q. Now, your answer is that even though the truck charge into Chicago is less, that it should pay a higher rate east of Chicago than the barge grain?

A. That is my answer.

Q. All right. Now, you said in answer to Mr. Enoch's questions and Mr. Bradford's questions that you had made the comparison on inbound grain into Chicago by barge on

the one hand and by rail on the other and that there you said that the barge grain ought to be given a lower eastbound rate than the rail grain into Chicago?

A. No, I didn't say that.

Q. You told me that your comparison was with the barge and rail previously.

A. I said as I understand it the point at issue in this hearing is the question between the shipment,—that is, the question as to whether the grain coming in by barge should move out at the same rate as grain which comes in under Illinois proportional rates and that rate is the same rate and not a lower rate.

Q. All right. Now, then, let us go back to the original proposition: Supposing that the barge transportation into [fol. 1273] Chicago is cheaper than truck transportation into Chicago but there is an equal quantity of grain originated, we will say, at Dwight, Illinois, one for truck and one that originates or is handled by rail from Morris, shipped by barge from Morris?

Exam. Taylor: Let us get the question straight now, Mr. Day.

By Mr. Day:

Q. The one shipment originates by rail and is—or by truck and is handled into Chicago by truck.

Exam. Taylor: Which one is that?

Mr. Day: That is the first shipment, from Dwight.

Q. The second shipment originates at Morris and is put on a barge there and hauled into Chicago: From an economic standpoint is there any reason why there should be a different charge assessed east from Chicago by rail?

A. As between those two shipments, no.

Q. They should take the same charge east?

A. With respect, however, to the whole question of trucking it is a broader question than the movement from one point.

Q. But in that case the charge should be the same?

A. From an economic standpoint I would say.

Q. Yes.

A. But that is not meant to assume that that would apply to trucking as a general proposition.

Q. Well, now, assuming that instead of at Dwight one shipment originates at Morris by truck and is hauled into [fol. 1274] Chicago by truck, the other is handled through an elevator at Morris and loaded on barges and hauled into Chicago, is there any reason for a difference in treatment eastbound from Chicago in those two shipments?

A. You have got the——

Q. From an economic standpoint?

A. The answer would be the same as the question at Dwight.

Q. Now, where is the largest corn producing area in the State of Illinois? Some distance south of the Illinois River Valley, isn't it?

A. If you started to draw a line through southern De Kalb County in Illinois and came in close to Chicago—not quite into Chicago and then bend that line to the west—I mean to the south as you go west, from that line down to the line of the Big Four Railroad.

Q. Would you go through Peoria? You would go through Peoria, wouldn't you, with that line?

A. Well, you would need a map to really find the situation. One of the heaviest corn producing sections in Illinois is in this area around Morris. That is one of the heaviest.

Q. Now, wait a minute. You were trying to give us a boundary line and I was trying to make it as definite as I could.

A. All right.

Q. Wouldn't a line drawn through Peoria be about the western boundary of that line?

[fol. 1275] A. No, there would be areas west of Peoria that produce a lot of corn but it is spotty through there.

Q. Yes, but I am talking about the important section, where the large corn tonnage comes from in Illinois.

A. There is lots of corn there west of the Illinois River. I would project the line here clear to Peoria and about to the Mississippi and then except certain spots. That is, I would draw the line I am talking about through southern DeKalb County.

Q. All right, you would bring it over to the river?

A. Yes, but except a number of spots in there which are poor soils.

Q. All right, go ahead.

A. I have done it, I am through.

Q. Oh, no, you have only begun from DeKalb to Chicago and then gone south from DeKalb.

A. All right. Then I may state——

Q. How far south are you going?

A. I would start on the eastern edge there, south of Danville, Illinois, and run in a general westerly direction but north and come out and bend your line up toward Peoria and then project it across the State. Now, it is a very difficult matter to describe that without a map.

Q. But isn't the simple answer that the big tonnage is north of the Big Four line extending through Champaign?

A. I wouldn't answer it that way.

[fol. 1276] Q. You would not?

A. No, sir.

Q. You would go south of there, would you?

A. Yes, sir.

Q. How far south?

A. Well, you are talking about where corn is produced.

Q. No, I am talking about—I am not talking about corn, where corn is produced. All I am talking about is where the big tonnage is. Corn is produced everywhere in the United States, you know that as well as I do.

A. Corn is produced in the big tonnage where it is marketed.

Q. No, there is more to it than where it is marketed.

A. All right. I say you start south of Danville, Illinois, about fifteen miles and run west, bend your line north and shoot a little bit south of Peoria and extend it across to the west border of the state.

Q. You would not take in the territory east of Peoria?

A. Yes, that is in there.

Q. Well, Danville and Peoria are about——

A. I have got two lines and everything in between is in my area. Here is a line here and here is a line here. East of Peoria is included in my area.

Q. So far as you concerned this territory around Morris is just as great a corn producing territory as the territory around Champaign or Peoria, is it?

[fol. 1277] A. I think it is more of an important area.

Q. You do?

A. Let me finish my answer. I think it is more important than the area in the immediate vicinity of Peoria.

Q. Well, by immediate vicinity you mean five or ten miles?

A. That is right.

Q. Yes.

A. Yes.

Q. But when you come east of Peoria along the highway you don't find any better corn country anywhere in Illinois, do you?

A. That is true, when you get away from Peoria you see some very good corn country.

Q. I don't mean the city streets or environs. And Champaign is merely a large center of corn? That is similarly so, isn't it?

A. Yes, Champaign County.

Q. And Livingston County?

A. Yes; Grundy County.

Q. You do insist on going back to Morris?

A. Yes, Grundy County.

Q. You had better take a look at the records. That is all.

A. I have looked at it many times.

By Mr. Brown:

Q. Mr. Norton, I think the record shows here that the cost of transportation by barge of corn from Morris for delivery at Chicago is a little over 4 cents per hundred pounds. Now, that is the record here.

[fol. 1278] A. All right, I will accept your statement on the record.

Q. And that the rail rate upon a movement of corn from Morris, Illinois to Chicago is 5 cents per 100 pounds, one man shipping by barge and the other shipping by rail and the rail movement paying one cent a hundred pounds more than the barge shipper: Would you say that both of those shippers should have out of Chicago the same reshipping rate to the East?

A. Well, if the railroad extends that privilege.

Q. What?

A. If the railroad extends those privileges.

Q. I don't ask you whether they extended it. Should they have it under your economic theory? Should both those shippers, one shipping by rail at five cents a hundred and another shipping by barge at four cents a hundred, both from Morris, Illinois and both landing at Chi-

cago and both going east of Chicago, should they both have the same reshipping rates from Chicago?

A. I would have to answer "Yes" after my answer to Mr. Day about trucks.

Q. Well, now, if the shipper by rail, who is paying 5 cents per 100 pounds, is denied by these eastern railroads' tariff the right to have the reshipping rate then, according to your answer, the barge should be also denied that privilege?

Mr. Belnap: Mr. Examiner, may I object to that question on the ground that it incorrectly states the fact? The Eastern lines have nothing in their tariffs which deny the reshipping rate on corn moving from Morris at the 5 cent rate.

[fol. 1279] Mr. Day: I think there is nothing on that.

Mr. Belnap: I think Mr. Brown will agree that there is nothing in the eastern lines' tariff like that.

Mr. Day: Whether Mr. Brown agrees with you on that, we don't want to appear to be acquiescing in that.

The Witness: I answered your question from the economic standpoint. It seems to me that the answer to Mr. Brown's question would be made in a total vacuum if you did not consider the factors involved in the whole theory of rate construction, which I don't feel competent to discuss or to answer.

By Mr. Brown:

Q. You stated,—or, rather, I stated two facts: The barge rate of about 4 cents a hundred on corn from Morris, Illinois to Chicago——

Exam. Taylor: I wouldn't call it a barge rate. I would call it a charge by barge.

By Mr. Brown:

Q. All right, a transportation or charge for the movement from Morris to Chicago on corn. There is also in this record exhibits showing that the rail rate on corn from Morris, Illinois to Chicago is 5 cents per 100 pounds. If that corn that moves by rail at 5 cents per 100 pounds, the rail rate, is denied the reshipping rate from Chicago to the east should the barge rate that pays the 5 cent,—that

pays the 4 cent rate from Morris to Chicago have the benefit of that reshipping rate, in your opinion?

A. May I go back and say that I haven't examined this record but, as I recall the actual freight charge by barge [fol. 1280] from Morris to Chicago, it was not 4 cents.

Q. I think the record here shows it was a little bit over 4 cents a hundred pounds.

A. But did that solely include every element of the cost?

Q. It included 1¾ cents per bushel for towing and furnishing the barge and also a half a cent per bushel for trimming and insurance and everything but it all simmered down to 4 cents a hundred or a litle more for the total charge for moving the grain via barge from Morris to Chicago.

A. I have answered that first question. The second answer, I also have answered it.

Q. You haven't answered the question as to whether the barge movement should be denied the benefit of the reshipping rates so long as the five cent rail rate is denied the benefit of the reshipping rate from Chicago to the east.

A. I said they were both equally entitled to it from an economic standpoint. Now, the question as to whether the railroads want to extend those privileges——

Q. Now, you have answered the question—you said they are both entitled to it.

A. I don't think the second question can be answered from an economic standpoint. It involves a number of considerations that I do not feel competent to discuss.

Q. Well, you are talking about the rate adjustment. I heard you mention Illinois proportional rates. What are they?

[fol. 1281] A. Well, they are a system of rates which have grown up.

Q. How did they grow up and where are they now?

Mr. Belnap: Mr. Examiner, I object on the ground this is beyond the witness' direct, as to the details.

Exam. Taylor: The witness specifically made reference to the Illinois proportional rates, Mr. Belnap.

Mr. Belnap: He was not specific. He did not attempt to tell how they grew up or what the level of them was or anything.

Exam. Taylor: Let us see what he knows about them.

The Witness: All right. May I first amplify my statement and say that I used them——

Mr. Brown: I don't hear you.

Exam. Taylor: Mr. Witness, I think you should answer the question, if you can, and then make your explanation afterwards.

The Witness: I have only a very general knowledge as to how it grew up and since that knowledge is so general I hesitate to answer as to specific cases involving rates. That is the reason I have refused to answer,—I have avoided answering certain questions, because I did not feel very competent to discuss them since they were based upon a history of the growth of rates.

By Mr. Brown:

Q. But you don't know anything about that history?
A. Not enough to discuss it with this group.

Mr. Brown: That is all.

[fol. 1282] Exam. Taylor: Anything further from this witness? Witness excused. Next witness.

(Witness excused.)

Mr. Root: Mr. W. H. Allen. Mr. Examiner, I have forgotten to offer exhibits 39 to 44 of Mr. Robbins' testimony. May I offer them at this time?

Exam. Taylor: They will be received.

(Exhibits 39 to 44, Witness, Robbins, received in evidence.)

Wilbur H. Allen was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. Mr. Allen, will you state your name, please?
A. Wilbur H. Alllen.
Q. And where do you reside, Mr. Allen?
A. My business address is 829 North Liberty Street, Morris, Illinois.
Q. Now, for the purpose of the record, before you give your statement, will you identify exhibits 45 to 48, inclusive, for the purpose of this record?

A. Yes, sir.

Q. What is exhibit 45?

A. That is the comparative costs in grain shipments from 9½ cent I. P. points, 5 cent lake points and 3 cent barge points and direct——

Exam. Taylor: What do you mean by "I. P. points?"

[fol. 1283] The Witness: Illinois proportional. And direct trucking to Chicago.

By Mr. Root:

Q. Will you identify number 46?

A. This chart, exhibit number 46, shows the results of 24 years of operation of the Farmers' Square Deal Grain Company at Morris, Illinois, operating under the following freight rates: 5 cents per hundredweight from January 8, 1914 to June 25, 1918; 7 cents per hundredweight from June 25, 1918 to August 26, 1926; 10 cents per hundredweight from August 26, 1926 to January 1, 1932; 9 cents per hundredweight from January 1, 1932 to March 28, 1938 and 9½ cents per hundredweight from March 28, 1938 to date, by the Rock Island. 4 cents per hundredweight from September 10, 1937 to May 15, 1937 and 3 cents per hundredweight to date by way of the Illinois waterway.

Q. Will you identify exhibit number 47?

A. Exhibit number 47: This chart shows five different modes of transportation and rates from Morris into Chicago. No. 1 shows the direct river buying; No. 2 shows local elevator buying for the River elevator; No. 3 shows trucks direct from the farm to Chicago——

Mr. Enoch: I think that is sufficient identification. He is simply reading what is on the exhibit.

The Witness: All right.

By Mr. Root:

Q. Now, identify number 48.

A. Number 48 is an exhibit showing cost of moving grain [fol. 1284] from the farm to Chicago by different methods and their savings to the producer.

Mr. Root: Now, your Honor, I would like to offer those for the purpose of the record.

Exam. Taylor: Any objection?

Mr. Enoch: I think before you rule on that we ought to have the privilege of asking some questions about them. As I understand it they are simply marked for identification now.

The Witness: The most of that is in my direct testimony here if you want to cover it that way.

Exam. Taylor: They will be referred to as exhibits 45 to 48 to be received later.

(Exhibits 45 to 48, Witness Allen, marked for identification.)

By Mr. Root:

Q. Mr. Allen, will you state the various positions or offices that you hold with any of the parties to this proceeding?

A. Why, my position at the present time is president of the Co-operative Allied Grain Dealers Corporation of Morris, Illinois, secretary and treasurer of the Allied Barge Corporation and manager of the Farmers' Square Deal Grain Company of Morris, Illinois.

Q. You understand the issues involved in this proceeding?

A. I do.

Q. You, as a matter of fact, have heard all the testimony [fols. 1285-1287] offered so far?

A. Absolutely.

Q. Now, have you prepared a statement that you would like to make here, Mr. Allen?

A. I have.

Exam. Taylor: Before we proceed on that, off the record, please.

(Discussion outside the record.)

Exam. Taylor: At this time, gentlemen, we will adjourn until nine o'clock tomorrow morning.

(Whereupon, at 4:17 o'clock p. m., the hearing was adjourned until 9 o'clock a. m., Thursday, January 18, 1940.)

[fol. 1288]

Morrison Hotel,
Chicago, Illinois,
January 18, 1940.

Met pursuant to adjournment at 9:00 o'clock a. m.

Before R. G. Taylor, Examiner

Appearances:

As heretofore noted, and the following additional:
Halsey McGovern and Willis Crane, Washington, D. C., U. S. Department of Agriculture.

Proceedings

Exam. Taylor: All right, gentlemen, come to order, please. Gentlemen, due to the weather conditions, being registered anywhere from 9 to 12 below zero, and from the appearance of the parties present and those absent, it appears that it would be well to take a twenty-minute recess, to give those parties a chance to come in.

(A twenty-minute recess was taken.)

Exam. Taylor: All right, gentlemen; come to order. Proceed, Mr. Root.

Wilbur H. Allen, resumed:

Redirect examination.

By Mr. Root:

Q. You are the same Mr. Allen that was testifying when [fol. 1289] this matter was adjourned yesterday?

A. Yes, sir.

Q. Mr. Allen, have you prepared a statement you would like to make in this matter?

A. I have.

Q. Proceed to make your statement; and may I call your attention to the fact that the room is larger, and that you read it slowly.

A. The name Wilbur H. Allen; business address 829 North Liberty Street, Morris, Illinois.

Mr. Day: You gave us that last night and your connection with these three companies.

The Witness: That is right. 95 per cent of my time is put in as Manager of the Farmers' Square Deal Grain Company. For eight and a half years I have had full charge of the books, records and income tax reports of this corporation. The Farmers' Square Deal Grain Company was organized in 1909; having at this time one hundred and fifty two farmer stockholders and six hundred and twenty two farmer patrons. The Farmers' Square Deal Grain Company is a member stockholder of the Co-operative Allied Grain Dealers Corporation, of Morris, Illinois, and a stockholder of The Allied Barge Corporation. I would like to make a statement here to clear the records of something that was said by John Brennen in his testimony here at the previous hearing. That neither myself nor The Farmers' Square Deal Grain Company, nor the Co-operative Allied [fol. 1290] Grain Dealers Corporation, nor the Allied Barge Corporation have ever borrowed or at this time do not owe the firm of Lowell-Hoit and Company one dollar. Neither does the firm of Lowell-Hoit and Company own any stock in either one of the above-mentioned companies. The Farmers' Square Deal Grain Company owns two elevators. One is located at Morris on the Rock Island Railroad, back one mile from the river; the other one is at Saratoga, Illinois, which is seven miles north of Morris and use- to be serviced by the F. & I. U. Railroad, which has been discontinued in the last two years. Since that time the only outlet service for that house is by truck to the river. Morris is located 60 miles southwest of Chicago. Our company is friendly to the railroads and have shipped out over the Rock Island Railroad since January 1, 1939, 62 cars of grain and shipped in 30 cars of merchandise.

Mr. Day: I think you ought to be specific about which one of these companies you are talking about now, when you say our company.

The Witness: The Farmers' Square Deal Grain Company. Farmers are interested in the lowest possible freight rate on their grain, as the returns on their investment figures on the net profit. Farmers, not being able to set the price of his products, receives what is left after everybody else takes theirs. The farmer is certainly concerned about the rates from the primary market to the east. If the rate [fol. 1291] is reduced, the farmer gets a better price; if the rate is raised, the opposite occurs. Now, I think, personally, that the thing for the railroad and Chicago Board of

Trade to do is give the farmers all the assistance and help they can, rather than to make it as hard as possible for them. The only reason the farmers use the waterway for the shipment of their grain is because it is a saving to them. The Illinois River Valley is one of the natural geographic regions in the United States. Agricultural and industrial products can reach the great markets and trade routes of the United States and export to the entire world through the Illinois River artery of commerce. There is a natural unity of interest in the Illinois River Valley. Morris is located in this Valley. I wish here to introduce exhibit No. 45, which shows the comparative cost of grain shipments from 9½ cents, Illinois proportional rate points, 5 cents Lake points, a 3 cent plus barge point and direct trucking to Chicago. These figures were prepared by myself and taken from actual items of expense that pertain to our business bere at Morris, and I hereby certify that they are true and correct as far as I am able to determine.

Mr. Brown: At this point, Mr. Allen, so where it shows via 9½ cents IP rate to Chicago, that is representative of the station Morris, Illinois?

The Witness: Morris, Illinois; yes, sir.

By Mr. Brown:

Q. Those figures relate to corn?

[fol. 1292] A. Anything that is shipped on a 9½ cent rate.

Q. This 5-cent local rate is on corn only, isn't it?

A. I guess that is right.

Q. Would it be all right to say that these figures are on corn?

A. Yes, that is what we are talking about, mostly, I guess. The figures of this exhibit show that the farmers are receiving 2 69/100 cents per bushel more for their grain at the local market in Morris, Illinois, than they did before there was an elevator on the Illinois River, at Morris, Illinois. Figures show according to this exhibit that we pay our farmers 2 69/100 cents per bushel more than we would if we were shipping on the rail on the 9½ cent I. P. rate. Since January 1, 1939, our firm has shipped by the way of the Illinois Waterway, 868,235 bushels, at a saving of 2 69/100 cents per bushel. This means that we have paid to our farmers $23,355.52 more than they would have received had we been shipping by rail on the Illinois

Proportional rate. Last spring the Rock Island put into effect a 5 cent Lake rate into Chicago from Morris but it has no reshipping value and bids issued on it are one-half cent per bushel less than I. P. bids delivered Chicago. This rate will expire June 30, 1940. Whenever Chicago is full of corn at the local industries the bids will be based on I. P. billing and the corn will sell just that much less. All [fol. 1293] then the local grain dealers can do is to take it off the farmers' price. Barged grain going into Chicago without any Eastern billing will come in direct competition with this 5 cent Lake rate corn from all over the country and very soon the city of Chicago will be so full of corn without any billing behind it that the industries will lower their bids and then the elevator operators will buy the barged corn and 5 cents Lake rate corn at the same cost as the I. P. rate billing corn. This is what some of the commission men in Chicago would like to see, as the grain that comes in over the rails to the commission man nets him a full cent commission whereas barge moved grain only net him one-half cent per bushel commission. If we as local grain dealers in the town of Morris are forced back to the Old I. P. rate we cannot possibly compete with the trucks that run the highway and buy grain direct from the farmer and haul it direct from the farm to Chicago. Being only 60 miles Southwest of Chicago, grain is trucked in there for a total cost of 6½ cents per bushel while we will be forced to try to operate on a cost equal to the I. P. rate or a total cost of 9 8/100 cents per bushel. This we cannot do. I wish here to introduce exhibit No. 46, which shows the operating picture of the Farmers' Square Deal Grain Company, at Morris, Illinois, for a period of 24 years back. This statement and the income tax reports were prepared by myself and taken from the books and records of The Farmers' Square Deal Grain Company and [fol. 1294] hereby certify that they are true and correct as far as the records show. The I. P. freight rate from Morris to Chicago from January 8, 1914, until June 25, 1918, was 5 cents per hundredweight. From June 25, 1918, until August 26, 1926, our I. P. rate was 7 cents per hundredweight. During this period our company handled an average annual bushelage of 645,157 bushels of grain on which we made an annual profit of $1,945.91.

Record.